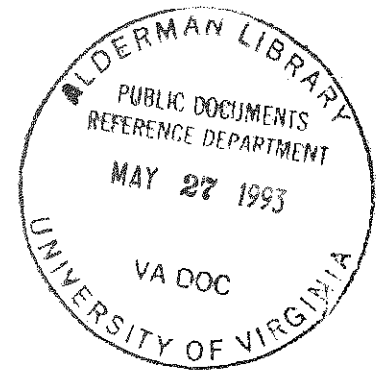
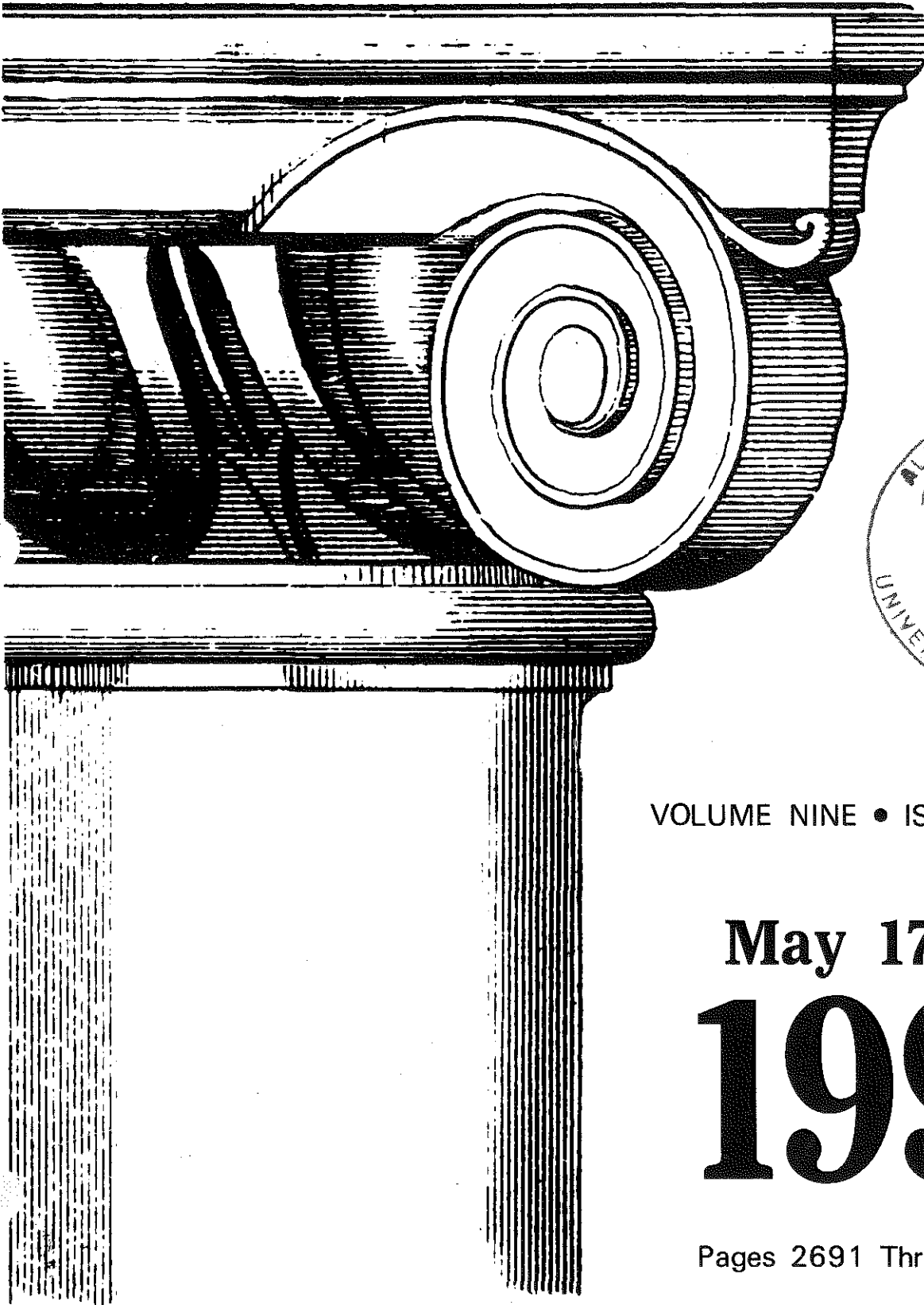


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THE VIRGINIA REGISTER

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OF REGULATIONS



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May 17, 1993

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions through Enhanced Testing.** The purpose of the proposed action is to promulgate a regulation to conform to the federal requirements for control of emissions from motor vehicles.

Public meeting: A public meeting will be held by the department at the Pohick Regional Library, Sydenstriker Road, Burke, Virginia, at 10:30 a.m. on May 19, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad hoc advisory group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business May 3, 1993, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants by May 12, 1993. If you are selected to be on the group, you are encouraged to attend the public meeting on May 19, 1993, and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus. The first meeting of this group will be at 2:30 p.m. on May 19 at the Pohick Regional Library, 6450 Sydenstriker Road, Burke, Virginia.

Public hearing plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA standard the

area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act Amendments (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

States are required to develop plans to ensure that areas will come into compliance with the federal health standard. Failure to develop adequate programs to meet the ozone air quality standard: (i) will result in the continued violations of the standard to the detriment of public health and welfare, (ii) may result in assumption of the control program by EPA at which time the Commonwealth would lose authority over matters affecting its citizens, and (iii) may result in the implementation of sanctions by EPA, such as prohibition of new major industrial facilities and loss of federal funds for sewage treatment plant development and highway construction. Although the EPA has been reluctant to impose these sanctions in the past, the Act now includes specific provisions requiring these sanctions to be issued by EPA if so warranted.

Of the consequences resulting from failure to develop an adequate program to control ozone concentrations in the ambient air, the most serious consequence will be the adverse impact on public health and welfare. A growing body of scientific data indicates that health and welfare effects associated with ozone are more serious than envisioned in the late 1970s. Some scientists believe that existing air quality standards may provide little or no margin of safety. Perhaps the most significant new finding is that ozone not only affects people with impaired respiratory systems, such as asthmatics, but also many people with healthy lungs, both children and adults. It can cause shortness of breath and lung congestion and inflammation when healthy adults are exercising, and more serious effects in the young, old, and infirmed. Recent EPA estimates suggest there are 20 to 30 million ozone-sensitive people in those major urban areas where levels are 25% (0.150 ppm) or more above the current health standard. The Northern Virginia Nonattainment Area is one of those major urban areas with ozone levels of up to 0.165 ppm. Equally high levels of ozone are often recorded in rural sectors downwind from these metropolitan areas.

Northern Virginia has an ozone air pollution problem classified by the EPA as "serious." The problem originates in large part from motor vehicle emissions. A vehicle emissions inspection (I/M) program has been in place in

Notices of Intended Regulatory Action

Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required and a more effective I/M program must be implemented in the Northern Virginia area.

I/M programs provide a way to check whether the emission control system on a vehicle is working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. I/M is designed to ensure that vehicles stay clean in actual use. Through periodic vehicle checks and required repair of vehicles that fail the test, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices. This, in turn, can substantially reduce the amount of volatile organic compounds and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Draft new regulations which will provide for implementation of a motor vehicle emissions testing program that meets the provisions of the federal Clean Air Act and associated EPA regulations and policies.
2. Make alternative regulatory changes to those required by the Act. No alternatives have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.
3. Take no action to amend the regulations and continue to operate the existing program in violation of the Act and risk sanctions by EPA.

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

Applicable federal requirements: The 1990 amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted and for the first time delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classification of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are classified as marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Section 182(c) (3) of the federal Act requires "enhanced"

I/M programs in all urbanized areas with 1980 populations of 200,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas. In addition, the Act created ozone transport regions (OTR) and specifically established one such region in the Northeastern United States, covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area of the District of Columbia, which includes Northern Virginia. The Act requires an enhanced I/M program in any metropolitan statistical area (MSA) or portion of a MSA within the OTR with a 1990 population of 100,000 or more, regardless of its nonattainment status.

The enhanced model program is based on annual, centralized testing of all model year 1968 and later light-duty vehicles and light-duty trucks to 8,500 pounds gross vehicle weight rating. Steady state testing is performed on 1968 through 1985 model year vehicles, while 1986 and later model year vehicles are subject to transient tailpipe emission testing. Also required is a test of the vapor recovery effectiveness of the fuel system and charcoal canister operation.

EPA regulations require that enhanced programs include a test-only network to achieve the performance standard. EPA does encourage biennial testing as a cost effective alternative to annual testing but the resulting difference in emissions control must be made up by further enhancements to the program.

At a minimum, the program must include computerized emission analyzers, on-road testing, denial of waivers for warranted vehicles or repairs related to tampering, a \$450 cost waiver requirement for emission-related repairs not covered by manufacturer's warranty, enforcement through vehicle registration denial, and inspection of the emissions control diagnostic system. In addition, each state must report biennially to EPA on emissions reductions achieved by the program.

An enhanced I/M program must be implemented by January 1, 1995. Areas switching from a test-and-repair to a test-only network may phase in the change between January 1995 and January 1996.

The General Assembly of Virginia passed legislation providing for a biennial, test-only enhanced emission inspection program which will become effective January 1, 1995. The program will apply to motor vehicles that have actual gross weights of 26,000 pounds or less. The new legislation also provides for regulations to address the protection of the following consumer interests in accordance with EPA requirements: (i) the number of inspection facilities and inspection lanes relative to population density, (ii) the proximity of inspection facilities to motor vehicle owners, (iii) the time spent waiting for inspections, and (iv) the days and hours of operation of inspection facilities. Other key provisions of the legislation include:

Notices of Intended Regulatory Action

Beginning January 1, 1995, an inspection fee cap of \$20 and a minimum repair cost of \$450 to qualify for a waiver;

Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection;

Vehicle held for resale by dealers, up to five years old, will not be required to have an inspection the first year, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's warranty at the time of resale; and

The requirement for the inspection to apply to all vehicles registered or operated in the affected area including (i) vehicles owned by government entities, (ii) vehicles owned by military personnel residing in the affected areas, and (iii) vehicles owned by leasing or rental companies.

The legislation directs the State Air Pollution Control Board to adopt regulations to implement the program. Federal law requires that regulations be adopted and submitted to EPA by November 15, 1993.

Statutory Authority: §§ 46.2-1179 and 46.2-1180 of the Code of Virginia.

Written comments may be submitted until the close of business on May 19, 1993, to the Director of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: David Kinsey, Policy Analyst, Division of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1620.

BOARD FOR BARBERS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Barbers intends to consider amending regulations entitled: **VR 170-01-1.1. Board for Barbers Regulations**. The purpose of the proposed action is to initiate the regulatory review process so as to solicit public comment regarding its current regulations and to make proposed amendments and other changes to the regulations which may be necessary.

Statutory Authority: § 54.1-201 of the Code of Virginia.

Written comments may be submitted until June 17, 1993.

Contact: Roberta L. Banning, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond,

VA 23230-4917, telephone (804) 367-8590.

BOARD FOR CONTRACTORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Contractors intends to consider amending regulations entitled: **VR 220-01-2. Board for Contractors Licensing Regulations**. The purpose of the proposed action is to review and seek public comments on all of its regulations for promulgation, amendment and repeal in order to carry out its mission to protect the public through the regulation of licensed contractors.

Statutory Authority: § 54.1-1102 of the Code of Virginia.

Written comments may be submitted until June 21, 1993.

Contact: Florence R. Brassier, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8557.

DEPARTMENT OF CORRECTIONS (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 Corrections intends to consider repealing regulations entitled: **VR 230-30-006. Jail Work/Study Release Program Standards**. The purpose of the proposed action is to repeal operational standards for locally operated work/study release programs. These standards are now included in VR 230-30-001, Minimum Standards for Jails and Lockups.

Statutory Authority: §§ 53.1-5 and 53.1-131 of the Code of Virginia.

Written comments may be submitted until June 17, 1993.

Contact: James S. Jones, Jr., Agency Regulatory Coordinator, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3262.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider amending regulations entitled: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security**. The purpose of the proposed action is to provide dial-up access to Criminal History Record Information for authorized

Notices of Intended Regulatory Action

users on an exceptional basis. Exceptions granted on basis of documented policies and procedures which ensure that access to criminal history record information is limited to authorized users.

Statutory Authority: §§ 9-170 and 9-188 of the Code of Virginia.

Written comments may be submitted until June 3, 1993.

Contact: Paul F. Kolmetz, Ph.D., Director, Division of Information Systems and Technology, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 371-7726.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.** The purpose of the proposed action is to increase fees to the career schools to offset budget deficit result of General Assembly action, and to bring regulations in line with recent changes to the Code of Virginia and State Special Education Regulations.

Statutory Authority: Item 131 of Chapter 893 of the 1992 Acts of Assembly and § 22.1-321 of the Code of Virginia.

Written comments may be submitted until May 25, 1993.

Contact: Carol Buchanan, Associate Specialist, Department of Education, Proprietary Schools, P.O. Box 2120, Richmond, VA 22546-2120, telephone (804) 225-2848 or toll-free 1-800-292-3820.



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 355-18-000. Waterworks Regulations.** The purpose of the proposed action is to make appropriate amendments to update portions of regulations pertinent only to state requirements, not federal mandates.

Statutory Authority: § 32.1-170 of the Code of Virginia.

Written comments may be submitted until June 3, 1993, to Allen R. Hammer, P.E., Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, Virginia 23218.

Contact: H.J. Eggborn, P.E., Engineering Field Director, Culpeper Field Office, Department of Health, 400 S. Main St., 2nd Floor, Culpeper, VA 22701, telephone (804) 829-7340.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Provision of Durable Medical Equipment and Supplies.** The purpose of the proposed action is to amend the State Plan for Medical Assistance concerning the provision of durable medical equipment and supplies through the Home Health Services Program.

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

Written comments may be submitted through 5 p.m. on June 1, 1993, to Mary Chiles, Manager, Long-Term Care Section, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-03-1. Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to amend §§ 4.1 B and 8.1 B to more clearly define the traineeship requirements for a license by endorsement and reinstatement of a lapsed license for periods of seven years or more of inactivity in the practice of physical therapy.

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

Written comments may be submitted until May 21, 1993, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 5th Floor, Richmond, Virginia 23230-1717.

Notices of Intended Regulatory Action

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

DEPARTMENT OF MOTOR VEHICLES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider amending regulations entitled: **VR 485-50-7801. Virginia Driver Improvement Act Rules and Regulations.** The purpose of the proposed action is to revise and update regulations relating to Article 19 (§ 46.2-489 et seq.) of Chapter 3 of Title 46.2 of the Code of Virginia.

Statutory Authority: §§ 46.2-203 and 46.2-489 of the Code of Virginia.

Written comments may be submitted until May 18, 1993, to Marc Copeland, Department of Motor Vehicles, P.O. Box 27412, Room 319, Richmond, Virginia 23269-0001.

Contact: Rena J. Roberts, Driver Improvement Program Manager, Department of Motor Vehicles, 2300 W. Broad Street, Room 311, Richmond, VA 23220, telephone (804) 367-2689.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Work intends to consider amending regulations entitled: **VR 620-01-2. Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to consider amending the requirement that all supervised experience be completed prior to applying for examination.

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

Written comments may be submitted until May 26, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and**

Specifications for Back-up Audible Alarm Signals. The purpose of the proposed action is to establish specifications which define standards and identification for back-up audible alarm signals required on garbage and refuse collection and disposal vehicles, and certain vehicles used primarily for highway repair and maintenance.

Statutory Authority: § 46.2-1175.1 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** The purpose of the proposed action is to establish specifications which define standards and identification for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia.

Statutory Authority: § 46.2-1026 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for regrooved or Recut Tires.** The purpose of the proposed action is to establish specifications which define standards for regroovable and regrooved tires and identification of regroovable tires.

Statutory Authority: § 46.2-1042 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations

Notices of Intended Regulatory Action

entitled: **Standards and Specifications of the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** The purpose of the proposed action is to establish specifications for lights used in farm tractors in excess of 108 inches in width as required by § 46.2-1102 of the Code of Virginia.

Statutory Authority: § 46.2-1102 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** The purpose of the proposed action is to establish specifications which define standards for stickers or decals required to be placed on all-terrain vehicles sold by retailers within the Commonwealth.

Statutory Authority: § 46.2-915.1 of the Code of Virginia.

Written comments may be submitted until May 19, 1993.

Contact: Captain W. Gerald Massengill, Safety Officer, Department of State Police, P.O. Box 85607, Richmond, VA 23285-5607, telephone (804) 674-2017.

REAL ESTATE BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Board intends to consider amending regulations entitled: **VR 585-01-1. Real Estate Board Regulations.** The purpose of the proposed action is to undertake a review and seek public comments on all its regulations for promulgation, amendment and repeal as is deemed necessary in its mission to regulate Virginia real estate licensees.

Statutory Authority: § 54.1-200 of the Code of Virginia.

Written comments may be submitted until July 1, 1993.

Contact: Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

TREASURY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Treasury Board intends to consider amending regulations entitled: **VR 640-02. Virginia Security for Public Deposits Act Regulations.** The purpose of the proposed action is to amend regulations governing the Security for Public Deposits Act in order to enhance protection for public funds on deposit in financial institutions.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Written comments may be submitted until May 21, 1993.

Contact: Mr. A. I. Samper, Director of Accounting and Administration, Treasury Board, P.O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-2392.

VIRGINIA WASTE MANAGEMENT BOARD

† Notice of 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 672-20-1. Financial Assurance Regulations of Solid Waste Facilities.** The purpose of the proposed action is to amend the Financial Assurance Regulations to be consistent with EPA criteria for municipal solid waste facilities, consider alternative mechanisms for financial responsibility and liability and to incorporate changes necessary to comply with 1993 legislation.

The current regulations are not consistent with the requirements of EPA Guideline Criteria for Municipal Solid Waste Facilities and must be amended to allow Virginia to become authorized for the full solid waste management program. Financial assurance for liability coverage requires environmental insurance which may not be readily available to many permitted facilities. The Code of Virginia in § 10.1-1410 requires the Waste Management Board to promulgate regulations. There are no appropriate alternatives to the amendment of existing regulations to assure effectiveness.

The purpose is to amend existing regulations to incorporate requirements contained in EPA Guidelines for Municipal Solid Waste Facilities and EPA Financial Assurance Guidelines for local governments which are under development by EPA. It is proposed to revise the applicability of the regulations, the liability coverage requirements and financial assurance mechanisms to be more efficient and effective in the establishment of funds necessary for facility closure and post-closure care of permitted facilities.

Comments are requested on the intended action to include recommendations on the regulations. Comments are requested on the costs and benefits of the regulations, amendments, and any proposed alternatives.

Notices of Intended Regulatory Action

There will be a public meeting to solicit comments on the intended regulatory action on June 17, 1993 at 10 a.m. at the Department of Environmental Quality, WCB Board Room, 4900 Cox Road, Glen Allen, Virginia.

Statutory Authority: §§ 10.1-1402 and 10.1-1410 of the Code of Virginia.

Written comments may be submitted until July 1, 1993, to W. Gulevich, Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

Contact: William F. Gilley, Regulatory Services Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

STATE WATER CONTROL BOARD

† Withdrawal of Notices of Intended Regulatory Action

The State Water Control Board is **WITHDRAWING** the Notices of Intended Regulatory Action for the following regulations:

1. VR 680-21-00 Water Quality Standards and VR 680-14-02 Nutrient Policy, published in 7:18 VA.R. 2736 June 3, 1991; and
2. VR 680-21-00 Water Quality Standards (VR 680-21-07.1 b - Potomac Embayment Standards, published in 9:15 VA.R. 2238-2240 April 19, 1993.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-22. Virginia Pollution Abatement (VPA) General Permit for Animal Feeding Operations.** The purpose of the proposed action is to adopt a general permit for animal feeding operations which establishes standard language for the limitations and monitoring requirements necessary to regulate the activities of this category of operations under the VPA permit program.

The basis for this regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys of investigations, and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on

the quality of state waters.

Need: This proposed regulatory action is needed in order to establish appropriate and necessary permitting of the pollutant management activities at animal feeding operations and to further streamline the permitting process.

Substance and purpose: General permits may be issued for categories of dischargers that (i) involve the same or similar types of operations; (ii) manage 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 purpose of this proposed regulatory action is to adopt a general permit for animal feeding operations with may operate and maintain treatment works for waste storage, treatment or recycle and which may perform land application of wastewater or sludges. The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate the activities of this category of operations under the VPA permit program. The possibility exists that more than one general permit may be developed to cover certain activities in this category of operations.

Estimated impact: There are several hundred animal feeding operations, including both concentrated and intensified operations, that may be required to be permitted under the VPA permit program and which may qualify for this proposed general permit. Adoption of these regulations will allow for the streamlining of the permit process as its relates to the covered categories of activities. Coverage under the general permit would reduce the paperwork, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulation would also reduce the manpower needed by the board for permitting these activities.

Alternatives: There are several alternatives for compliance with state requirements to permit pollutant management activities at animal feeding operations. One is the issuance of an individual VPA permit to each facility. The others include adopting general VPA permits to cover specific operations in this category of activities including concentrated and intensified operations.

Public meetings: The board's staff will hold public meetings at 7 p.m. on Thursday, June 3, 1993, at the Rockingham County Administrative Center, Board of Supervisors Room, 20 East Gay Street, Harrisonburg; at 7 p.m. on Thursday, June 17, 1993, at the Norfolk City Council Chamber, 810 Union Street, City Hall, Norfolk; and at 7 p.m. on Thursday, June 24, 1993, at the Roanoke County Administration Center, Community Room, 338 Brambleton Avenue, S.W., Roanoke, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the

Notices of Intended Regulatory Action

accessibility of the facilities should contact Doneva Dalton at the address below or by telephone at (804) 527-5162. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, May 17, 1993.

Applicable laws and regulations: State Water Control Law, Clean Water Act, and Permit Regulation (VR 680-14.01).

Statutory Authority: § 62.1-44 15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on June 30, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-15-04. Shenandoah River Surface Water Management Area (the Shenandoah River, including the Portions of the North Fork Shenandoah River and the South Fork Shenandoah River located within Warren County).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides local governments the right to petition the board for consideration of surface water management areas. The board has received petitions from the Clarke and Warren Counties Board of Supervisors requesting a surface water management area for the Shenandoah River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the Shenandoah River in Clarke County and Warren County for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit.

Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the Shenandoah River, including the portions of the North Fork Shenandoah River and South Fork Shenandoah River located within Warren County. The staff estimates 15 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be more agricultural irrigators who are not currently reporting their use.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to \$3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Wednesday, May 26, 1993, at the Board of Supervisors Room, Clarke County Administration Office, 102 North Church Street, Berryville, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no

Notices of Intended Regulatory Action

later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on June 1, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-15-05. North River Surface Water Management Area (The North River and All Its Tributaries Above the Confluent with the Middle River).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides local governments the right to petition the board for consideration of surface water management areas. The board has received a letter from the Town of Bridgewater's attorneys requesting a surface water management area for the North River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the North River in Augusta and Rockingham Counties for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit. Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the North River in the proposed area. The staff estimates 15 surface water

withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be more agricultural irrigators who are not currently reporting their use.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to \$3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Thursday, May 20, 1993, at the Rockingham County Administration Office, Board of Supervisors Room, 20 East Gay Street, Harrisonburg, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on May 28, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

Notices of Intended Regulatory Action

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-15-06. James River Surface Water Management Area (The Richmond Metropolitan Area).** The purpose of the proposed action is to define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect.

Need: Surface water management areas are needed where low flow conditions threaten, or could threaten, beneficial stream uses. The Code of Virginia, § 62.1-246, provides local governments the right to petition the board for consideration of surface water management areas. The board has received a petition from the Henrico County Board of Supervisors requesting a surface water management area for the James River.

Substance and purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation the Commonwealth is protecting the beneficial uses of the James River in the Richmond metropolitan area for the public welfare, health and safety of the citizens of the Commonwealth.

The proposed regulation will define the boundaries of the surface water management area and establish the flow level at which permit conditions will be in effect. Existing water users as of July 1, 1989, will have to apply for a Surface Water Withdrawal Certificate which will contain a board-approved water conservation or management plan. If an existing user wants to increase his withdrawal, he will have to apply for a Surface Water Withdrawal Permit. Surface water users in existence after July 1, 1989, will have to apply for a Surface Water Withdrawal Permit which will contain withdrawal limits, instream flow conditions and a water conservation or management plan.

Estimated impact: The proposed regulation will impact persons withdrawing surface water equal to or greater than 300,000 gallons per month from the James River in the Richmond metropolitan area. The staff estimates 10 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be some agricultural irrigators who are not currently reporting their use. Some counties are not direct withdrawers but purchase water from a withdrawer and will therefore be impacted, such as Chesterfield, Hanover and Henrico Counties.

It is estimated that the time required of each affected withdrawer to fill out the application forms and to prepare water conservation or management plans will be no more than 40 hours. Simple operations such as agricultural

irrigation will require less time. Assistance in filling out the application forms and in developing water conservation or management plans will be available from the State Water Control Board.

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to \$3,000 depending on the type of withdrawal. It should be noted that these permit fees are established in a separate regulation, Fees for Permits and Certificates (VR 680-01-01), which is in the process of being adopted by the board.

These regulations also impact the board. This is a new program and additional staffing will be needed. The staffing and budget implications are not known at this time. However, the cost of administering this program should be partially offset by the revenue from permit fees.

Issues: Issues under consideration include whether the board should adopt the proposed surface water management area and issue Surface Water Withdrawal Permits and Surface Water Withdrawal Certificates. Additional issues are minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Public meeting: The board will hold a public meeting at 7 p.m. on Monday, May 24, 1993, in the Board Room at the State Water Control Board's office, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Thursday, April 29, 1993.

Statutory Authority: § 62.1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on May 28, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

Notices of Intended Regulatory Action

DEPARTMENT OF YOUTH AND FAMILY 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 Youth and Family Services intends to consider promulgating regulations entitled: **Minimum Standards for the Detention of Juveniles in Jails, Lockups and Court Holding Cells.** The purpose of the proposed action is to ensure the safety of detained juveniles and the security of the detaining facilities in accordance with federal and state law.

Statutory Authority: §§ 16.1-249 and 66-10 of the Code of Virginia.

Written comments may be submitted until June 3, 1993.

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

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 EDUCATION (STATE BOARD OF)

Title of Regulation: ~~VR 270-02-0009~~ VR 270-01-0009 .
Regulations Governing Literary Loan Applications in Virginia.

Statutory Authority: Article VIII, § 8 of the Constitution of Virginia; §§ 22.1-16, 22.1-140 and 22.1-142 of the Code of Virginia.

Public Hearing Date: June 24, 1993 - 8:30 a.m.

Written comments may be submitted until July 17, 1993.

(See Calendar of Events section for additional information)

Summary:

The proposed amendments provide more funds to local school divisions to construct new schools. Previously, the regulations only provided \$2,500,000 for Literary Fund applications. Based on rising costs for new schools, it is recommended that \$5,000,000 be approved in accordance with § 22.1-147 of the Code of Virginia. In addition, the regulations are being amended in accordance with § 22.1-140 of the Code of Virginia, which requires that plans and specifications be certified by the division superintendent and are accompanied by a statement by an architect or professional engineer. This certification replaces the previous approval process in place by the Department of Education. Further, the regulations are being formally amended to incorporate changes which were required by the 1989 and 1990 sessions of the General Assembly through Appropriation Act provisions. The required changes increased the ceiling on indebtedness to the Fund, increased consolidation incentives, and provided priority funding for projects resulting from consolidation of school divisions. The Board of Education adopted the required changes on July 26, 1990. However, they were never published in the Virginia Register.

VR 270-01-0009. Regulations Governing Literary Loan - Applications in Virginia.

PART I. POLICY.

§ 1.1. It is the policy of the Board of Education to assist localities in borrowing from the Literary Fund to the greatest extent feasible, taking into consideration, the size of the Literary Fund, the availability to school divisions of alternative financing, the number and repayment ability of

school divisions desiring to borrow from the Literary Fund, and the sense of the General Assembly for the administration and equitable distribution of the Literary Fund.

PART II. DEFINITIONS.

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

"*Approved Application List*" means the list maintained by the Department of Education of those Literary Loan applications which initially have been approved as to form by the Board of Education but have not been placed on the "Waiting List."

"*Board*" means the State Board of Education.

"*Department*" means the State Department of Education.

"*Project*" means capital construction for the purpose of erecting, altering, or enlarging a school building in a public school division of Virginia, or a regional center operating under a Board of Control as defined by board regulations.

"*Waiting List*" means the list maintained by the department of those Literary Loan applications which the board has placed on the Waiting List of loans anticipating the release of loan funds from the Literary Fund.

PART III. APPLICATION APPROVAL.

§ 3.1. A school division applying for a Literary Loan shall meet the statutory requirements for such a loan as set forth in §§ 22.1-142 through 22.1-161 of the Code of Virginia and the Appropriations Act. The application shall be submitted to the department on Form V.A. 005, completed, signed and sealed by the appropriate local officials and examining attorney certifying to the information contained in the application.

§ 3.2. After examination and review of the contents of the application by the staff of the department and review of the application and the certifications by the Office of the Attorney General, the department shall recommend to the board the approval of those applications which are in proper form for further consideration by the board and for placement on the Approved Application List.

§ 3.3. Upon approval of a Literary Fund loan application, a Memorandum of Lien form, properly executed and

recorded in the appropriate circuit court, is to be returned to the department for recordation, after which it will be forwarded to the State Treasurer for record keeping. It is recognized that the lien is not effective until the Board of Education approves the initial release/commitment of funds against the project. Section 22.1-157 of the Code of Virginia provides that no recordation tax shall be assessable.

§ 3.4. Applications for Literary Fund loans shall not be approved by the board if the project already has been bid prior to receipt of the application in the department, except in the case of a documented emergency.

PART IV. APPROVED APPLICATION LIST.

§ 4.1. The board shall place applications on the Approved Application List upon the recommendation of the department made by the Superintendent of Public Instruction or his designee.

§ 4.2. For applications on the Approved Application List to qualify for placement on the Waiting List, school divisions shall submit architectural and engineering plans to the department for review and approval by the department a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the Uniform Building Code.

§ 4.3. Upon notification that plans submitted under § 4.2 have been approved by the department, school divisions on the Approved Application List must request in writing to be placed on the Waiting List.

§ 4.4. § 4.3. Except as provided in § 10.2, Applications which remain on the Approved Application List for three years shall be removed from the list. Localities shall be notified at the end of the second year of the three-year cancellation policy.

PART V. RANGE AND DURATION OF LOANS.

§ 5.1. Except as provided in §§ 5.2 and 5.3, the maximum loan amount available for any single project constructing a new single school through the Literary Fund is \$2.5 \$5 million (effective for all applications approved by the board subsequent to the effective date of these regulations).

The maximum loan for any asbestos removal, addition to existing building, and renovations through the Literary Fund is \$2.5 million per school.

§ 5.2. In the event the applicant school division(s) certifies and the board determines that the project will result in the closing of two or more school buildings due to (i) inability to meet educational requirements, (ii) structural deficiencies, or (iii) cost inefficiencies, the applicant school division(s) shall be eligible for an amount up to an additional \$1 million on a Literary Fund loan for such project up to a maximum of \$5 million per project.

§ 5.3. In the event that two or more school divisions are consolidated into a single school division, the consolidated school division shall be eligible for an amount up to an additional \$1 \$2 million on a Literary Fund loan for any project resulting directly from said consolidation up to a maximum of \$5 million per project.

§ 5.4. The minimum loan amount available for any single project through the Literary Fund is \$50,000 (effective for all applications approved by the board subsequent to the effective date of these regulations). The several applications to fund a regional project shall be combined for the purpose of meeting this minimum amount.

§ 5.5. Literary Fund loans shall be made for a period of not less than five years nor more than 20 years. Literary Fund loans in an amount between \$50,000 and \$100,000 shall be for a period of five years.

PART VI. INTEREST RATES.

§ 6.1. Except as modified by § 6.3 below, the interest rate for a Literary Loan shall be based on the school division's Composite Index, used for distribution of State Basic Aid, in effect when the board places the project on the Waiting List; except with respect to the interest rate on these applications on the Approved Application List prior to March 23, 1987, which interest shall not be increased.

§ 6.2. The interest rate for a loan generally shall be determined on the basis of a composite index of the applying school division as follows:

		Per Annum Interest Rate
Step 1. Composite Index between .2 and .299	.2999	2.0%
Step 2. Composite Index between .3 and .399	.3999	3.0%
Step 3. Composite Index between .4 and .499	.4999	4.0%
Step 4. Composite Index between .5 and .5999	.5999	5.0%
Step 5. Composite Index between .6 and .8	.8000	6.0%

§ 6.3. The board reserves its option under § 22.1-150 of the Code of Virginia to fix the actual rate for a Literary Loan, on the date funds for the Literary Loan are approved for release, at one percentage point above or below the rate applicable on the date the application was placed on the Waiting List.

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PART VII. WAITING LIST.

§ 7.1. After a loan application initially has been approved by the department and the division ~~requests in writing to be placed on the Waiting List for Literary Fund funding~~ *submits a copy of the plans, approval by the division superintendent and architect*, the board shall consider placement of the application on the Waiting List.

§ 7.2. Applications shall be placed into priorities on the Waiting List as follows:

Priority 1: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index less than .6000, and an outstanding indebtedness (including the application considered for release of funds by the Board of Education) to the Literary Fund less than ~~\$15~~ \$20 million.

Priority 2: Applications placed on the Waiting List by the Board of Education from school divisions having a composite index of .6000 or above, or an outstanding indebtedness (including the application considered for release of funds by the Board of Education) to the Literary Fund greater than ~~\$15~~ \$20 million.

§ 7.3. Within each priority, applications shall become eligible for release of funding in the same relative order as having been approved by the board as having met all conditions for a Literary Fund loan.

§ 7.4. Applications in Priority 2 shall be eligible for funding only when the board ~~certifies~~ *determines* that all applications, current and anticipated, and the applications to be added from Priority 2 can be funded within one year.

§ 7.5. The board may place an individual application ahead of its position assigned by § 7.3, if the board finds that the best interest for the education in the state is served by such placement. Reasons for such placement may include, but are not limited to (i) asbestos containment or removal; (ii) natural disasters; (iii) unique circumstances that may be detrimental to education in the absence of a Literary Fund loan. Such placement shall be acted on by the board on an individual application basis when all requirements for release of a Literary Fund loan have been met by the school division.

§ 7.6. *The board shall provide priority funding for any application resulting directly from the consolidation of two or more divisions into a single school division.*

PART VIII. RELEASE OF LITERARY FUNDS.

§ 8.1. The release of Literary Funds shall be approved by the board for an application when the Literary Fund has an unencumbered sum available that is at least equal to the amount of the application.

§ 8.2. All other funds committed to a Literary Fund project shall be expended before the Literary Fund loan shall be available for disbursement to the locality for the approved project.

§ 8.3. Actual disbursements charged to the approved Literary Fund loan shall be subject to the submission of actual invoices or other evidence of bills paid or due and payable by the locality.

§ 8.4. Upon the award of the construction contract for an application in Priority 1 on the Waiting List, funds shall be released for the reimbursement of the design phase of architectural and engineering services for the project. Applications in Priority 2 shall be eligible for reimbursement of the design phase of architectural and engineering services only when the application has been certified to be eligible for funding by the board under § 7.4.

§ 8.5. After the ~~department's approval of final plans and specifications under § 22.1-140;~~ *localities submission to the Superintendent of Public Instruction of a copy of the plans and specifications with a letter of approval by the division superintendent, accompanied with a statement by an architect or professional engineer licensed by the Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects that such plans and specifications are, to the best of his knowledge and belief, in compliance with the regulations of the Board of Education and the Uniform Building Code,* the locality may proceed with a Literary Fund project and still qualify for reimbursement from the Literary Fund provided that short term financing is used for that portion of the project to be financed by a Literary Fund loan (§ 22.1-148 B of the Code of Virginia). A temporary loan shall be subject to the restrictions found in § 22.1-110 of the Code of Virginia. Short term financing also may include advances from other fund balances and current operating funds. If permanent financing such as bond funds authorized through locally approved referenda, by local charter, or the Virginia Public School Authority are used for the Literary Fund portion of the project, Literary Funds shall not be released for the project when the application moves to the top of the Waiting List.

§ 8.6. An application which has been approved for release of funds and which has not been bid within two months of the board action to release funds will be returned to the Approved Application List. Upon the written request by the locality for reinstatement, any application so returned shall be reinstated by the board at the bottom of the appropriate priority (§ 7.2) of the Waiting List. The date of the board's reinstatement on the Waiting List by this section shall determine the relative order for eligibility of funding.

PART IX. PROPERTY TRANSFER.

§ 9.1. When a school board or a local governing body sells

or transfers property on which there is an outstanding balance on a Literary Loan, such balance becomes due and must be paid before title to the property is conveyed to the new owner. In no event, however, shall this provision be applicable where a court of competent jurisdiction decrees otherwise in an annexation settlement, or where fee simple title, after sale or transfer, remains in either the school board or its governing body.

PART X. TRANSITIONAL PROVISIONS.

§ 10.1. All loan applications which, prior to March 23, 1987, were on the current "inactive list" maintained by the department (i.e., loan applications which were approved by the board) and which were not on the Waiting List, shall be placed automatically on the "Approved Application List." The order in which such applications are placed on the Waiting List shall be governed by the provisions of these emergency regulations.

§ 10.2. Literary Loan applications on the "inactive list" dated March 1, 1987 shall have one year from March 23, 1987 to submit final plans and specifications to the department or be removed from the Approved Application List (unless the application was approved by the board subsequent to March 1, 1985).

§ 10.3. Literary Loan application Form V.A. 005 shall remain the proper form for filing a Literary Loan application, and is obtainable from the department.

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

Title of Regulation: VR 270-01-0003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

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

Public Hearing Date: N/A - Written comments may be submitted through July 16, 1993.

(See Calendar of Events section for additional information)

Summary:

The regulation is designed to ensure that adequate care, treatment, and education are provided by children's residential facilities. The proposed revisions amend and clarify the requirements governing intake and service planning in Parts I and V. The proposed revisions are designed to increase emphasis on treatment and services, clarify the types of

admissions, decrease emphasis on paperwork, increase opportunities for use of professional judgment by providers and regulators, increase providers' flexibility to address the components of intake and service planning, simplify the requirements, and eliminate unnecessary and redundant requirements.

VR 270-01-0003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.

PART I. INTRODUCTION.

Article 1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Group home" means a community-based, home-like

single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 residents.

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

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

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

"Independent living program" means a program that is specifically approved to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

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

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

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

"Intrusive aversive therapy" means a formal behavior management technique designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior

through the application of aversive stimuli contingent upon the exhibition of such behavior. Intrusive aversive therapy does not include verbal therapies, seclusion, physical or mechanical restraints used in conformity with the applicable human rights regulations promulgated pursuant to § 37.1-84.1 of the Code of Virginia, or psychiatric medications which are used for purposes other than intrusive aversive therapy.

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

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

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

"Licensure" means the process of granting legal permission to operate a residential facility for children and to deliver program services. (Under the Code of Virginia, no person shall open, operate or conduct a residential school for the handicapped without a "certificate to operate" such school issued by the Board of Education. The issuance of such a "certificate to operate" grants legal permission to operate a school for the handicapped. Therefore, in this context, the term "certificate to operate" is synonymous with the word "licensure" and will be termed licensure for purposes of this process.)

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

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

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

"Mechanical restraint" means the use of devices to restrict the movement of an individual or the movement or normal function of a portion of the individual's body,

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but does not include the appropriate use of those devices used to provide support for the achievement of functional body position or proper balance and those devices used for specific medical and surgical treatment or treatment for self-injurious behavior.

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

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

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

"Parent" means a natural or adoptive parent. Parent means either parent unless the facility has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody, which provides to the contrary. Parent also includes a surrogate parent appointed pursuant to provisions of the Department of Education's regulations governing special education programs for handicapped children and youth. An individual 18 years or older may have the authority to assert any rights under the Department of Education's regulations in his own name.

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

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

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

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

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

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

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

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

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

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and which receives no public funds shall be licensed under minimum standards for licensed child-caring institutions as promulgated by the State Board of Social Services and in effect on January 1, 1987 (§ 63.1-196.4 of the Code of Virginia); and
2. Private psychiatric hospitals serving children will be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services under its "Rules and Regulations for the Licensure of Private Psychiatric Hospitals."

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

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

"Rest day" means a period of not less than 32

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

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

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

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

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

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

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

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

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

"Shall" means an obligation to act is imposed.

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

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

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

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

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

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

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

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

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

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

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

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

Article 2. Legal Base.

§ 1.2. The Code of Virginia is the basis for the requirement that private residential facilities for children

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be licensed, certified and approved. It also authorizes the several departments to operate or reimburse certain public facilities. In addition, P. L. 94-63 and Title XX of the Social Security Act require the establishment of quality assurance systems.

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

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

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

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

Article 3. Interdepartmental Agreement.

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

recently updated effective September 30, 1984 approved on March 14, 1991 .

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

1. The joint development and application of licensure and certification standards;
2. A single coordinated licensure, certification and approval process that includes:
 - a. A single application for appropriate licensure, certification or approval;
 - b. A system for review of compliance with applicable standards;
 - c. A single license/certificate issued under the authority of the appropriate department(s) or board(s); and
 - d. Clear lines of responsibility for the enforcement of standards.
3. An Office of the Coordinator to provide central coordination and monitoring of the administration of the interdepartmental licensure/certification program.

Article 4. General Licensing/Certification Requirements.

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

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

§ 1.10. Corporations sponsoring residential facilities for children shall maintain their corporate status in

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

Article 5. The License/Certificate.

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

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

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

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

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

Article 6. Types of Licenses/Certificates.

§ 1.16. An annual license/certificate may be issued to a residential facility for children that is subject to the licensure authority of the Departments of Education; Mental Health, Mental Retardation and Substance Abuse Services; or Social Services when its activities, services and requirements substantially meet the minimum standards and requirements set forth in the Interdepartmental Standards, applicable certification standards and any additional requirements that may be specified in relevant statutes. An annual license/certificate is effective for 12 consecutive months, unless it is revoked or surrendered sooner.

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

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

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

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

§ 1.18. An extended license/certificate may be issued following the expiration of an annual or an extended license/certificate provided the applicant qualifies for an annual license/certificate and, additionally, it is determined by the licensing/certification authority that (i) the facility has a satisfactory compliance history; and (ii) the facility has had no significant changes in its program, population, sponsorship, staffing and management, or financial status during the term of the previous annual or extended license. In determining whether a facility has a satisfactory compliance history, the licensing/certification authority shall consider the facility's maintenance of compliance as evidenced by licensing complaints; monitoring visits by staff of the licensing authority; reports

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of health, fire and building officials; and other sources of information reflecting on the facility's continued compliance with applicable standards. An extended license is effective for a specified period not to exceed 24 consecutive months, unless it is revoked or surrendered sooner.

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

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

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

Article 7. Preapplication Consultation Services.

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

§ 1.23. Preapplication consultation may be designed to accomplish the following purposes:

1. To explain standards and statutes;
2. To help the potential applicant explore the operational demands of a licensed/certified/approved residential facility for children;
3. To provide assistance in locating sources of information and technical assistance;
4. To refer the potential applicant to appropriate agencies; such as, the Department of Health, the State Fire Marshal, local fire department, and local building officials; and
5. To comment, upon request, on plans for proposed construction or on existing property in terms of suitability for the purposes proposed. Such comments shall be limited to advice on basic space considerations.

Article 8. The Initial Application.

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

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

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

Article 9. The Investigation.

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

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

Article 10. Allowable Variance.

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

1. Enforcement will create an undue hardship;
2. The standard is not specifically required by statute or by the regulations of another government agency; and
3. Resident care would not be adversely affected.

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

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

Article 11. Decision Regarding Licensure/Certification.

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

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

§ 1.33. Private facilities.

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

also include any specifications of the license and may contain recommendations.

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

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

Article 13.

Intent to Deny a License, Certificate or Approval.

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

§ 1.36. Private facilities.

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

1. A statement of the intent of the licensing/certification authorities to deny;
2. A list of noncompliances and circumstances leading to the denial; and
3. Notice of the facility's rights to a hearing.

§ 1.37. Locally-operated facilities.

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

§ 1.38. State-operated public facilities.

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

§ 1.39. Out-of-state facilities.

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

§ 1.40. The hearing.

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

§ 1.41. Final decision.

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

Article 14.

Renewal of License/Certificate.

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

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

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

Article 15.

Early Compliance.

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

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

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3. All other terms of the license/certificate remain the same.

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

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

Article 16. Situations Requiring a New Application.

§ 1.47. A new application shall be filed in the following circumstances:

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

Article 17. Modification of License/Certificate.

§ 1.48. The conditions of a license/certificate may be modified during the term of the license with respect to the number of residents, the age range or other conditions which do not constitute substantial changes in the services or target population.

The licensee shall submit a written report of any contemplated changes in operation which would affect either the terms of the license/certificate or the continuing eligibility for a license/certificate.

A determination will be made as to whether changes may be approved and the license/certificate modified accordingly or whether an application for a new license/certificate must be filed. The licensee will be notified in writing within 30 days as to whether the modification is approved or a new license is required.

Article 18. Visitation of Facilities.

§ 1.49. Representatives of the departments shall make announced and unannounced visits during the effective dates of the license/certificate. The purpose of these visits is to monitor compliance with applicable standards.

Article 19. Investigation of Complaints and Allegations.

§ 1.50. The four departments are responsible for complete and prompt investigation of all complaints and allegations, and for notification of the appropriate persons or agencies when removal of residents may be necessary. Suspected

criminal violations shall be reported to the appropriate law-enforcement authority.

Article 20. Revocation of License/Certificate.

§ 1.51. Grounds for revocation.

The license, certificate or approval may be revoked when the licensee:

1. Violates any provision of the applicable licensing laws or any applicable standards made pursuant to such laws;
2. Permits, aids or abets the commission of any illegal act in such facility;
3. Engages in conduct or practices which are in violation of statutes related to abuse or neglect of children; or
4. Deviates significantly from the program or services for which a license was issued without obtaining prior written approval from the licensing/certification authority or fails to correct such deviations within the time specified.

§ 1.52. Notification of intent to revoke.

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

§ 1.53. Private facilities.

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

1. A statement of the intent of the licensing/certification authorities to revoke;
2. A list of noncompliances and circumstances leading to the revocation; and
3. Notice of the facility's rights to a hearing.

§ 1.54. Locally-operated facilities.

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

§ 1.55. State-operated public facilities.

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

§ 1.56. Out-of-state facilities.

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

§ 1.57. The hearing.

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

§ 1.58. Final decision.

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

§ 1.59. Suppression of unlicensed operations.

The suppression of illegal operations or activities involves action against a person or group operating without a license/certificate or operating after a license/certificate has expired or has been denied or revoked. All allegations of illegal operations shall be investigated promptly. After consultation with counsel, action may be initiated by the licensing/certification authority against illegally operating facilities by means of civil action, by injunction or by criminal action.

§ 1.60. Appeals.

A. Following receipt of the final order transmitting the decision of the licensing/certification authority(ies) after an administrative hearing, the applicant/licensee has the right to appeal pursuant to the applicable sections of the Administrative Process Act, § 9-6.14:1 et seq. of the Code

of Virginia.

B. Continued operation of a facility during the appeal process shall conform to applicable sections of the Code of Virginia.

PART II. ORGANIZATION AND ADMINISTRATION.

Article 1. Governing Body.

§ 2.1. The residential facility for children shall clearly identify the corporation, association, partnership, individual, or public agency that is the licensee.

§ 2.2. The licensee shall clearly identify any governing board, body, entity or person to whom it delegates the legal responsibilities and duties of the licensee.

Article 2. Responsibilities of the Licensee.

§ 2.3. The licensee shall appoint a qualified chief administrative officer to whom it delegates in writing the authority and responsibility for the administrative direction of the facility.

§ 2.4. The licensee shall develop and implement written policies governing the licensee's relationship to the chief administrative officer that shall include, but shall not be limited to:

1. Annual evaluation of the performance of the chief administrative officer; and

2. Provision for the chief administrative officer to meet with the governing body or with the immediate supervisor to periodically review the services being provided, the personnel needs and fiscal management of the facility.

§ 2.5. The licensee shall develop a written statement of the philosophy and the objectives of the facility including a description of the population to be served and the program to be offered.

§ 2.6. The licensee shall review, at least annually, the program of the facility in light of the population served and the objectives of the facility.

§ 2.7. The licensee shall review, develop and implement programs and administrative changes in accord with the defined purpose of the facility.

Article 3. Fiscal Accountability.

§ 2.8. The facility shall have a documented plan of financing which gives evidence that there are sufficient funds to operate.

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§ 2.9. A new facility shall with the initial application document funds or a line of credit sufficient to cover at least 90 days of operating expenses unless the facility is operated by a state or local government agency, board or commission.

§ 2.10. A new facility operated by a corporation, unincorporated organization or association, an individual or a partnership shall submit with the initial application evidence of financial responsibility. This shall include:

1. A working budget showing projected revenue and expenses for the first year of operation; and
2. A balance sheet showing assets and liabilities.

§ 2.11. Facilities having an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. A copy of the facility's most recently completed financial audit;
2. A report on any changes in income, expenses, assets, and liabilities that significantly change the fiscal condition of the facility as reflected in the financial audit submitted or a statement that no such changes have occurred; and
3. A working budget showing projected revenue and expenses for the coming year.

§ 2.12. Facilities operated by state or local government agencies, boards and commissions that do not have an approved rate established in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include a working budget showing appropriated revenue and projected expenses for the coming year.

§ 2.13. Facilities operated by corporations, unincorporated organizations or associations, individuals or partnerships that do not have a rate set in accordance with the Interdepartmental Rate Setting Process shall submit evidence of financial responsibility. This shall include:

1. An operating statement showing revenue and expenses for the past operating year;
2. A working budget showing projected revenue and expenses for the coming year;
3. A balance sheet showing assets and liabilities; and
4. A written assurance from the licensee that the documentation provided for in subdivisions 1, 2, and 3 above presents a complete and accurate financial report reflecting the current fiscal condition of the facility.

§ 2.14. The facility shall provide additional evidence of financial responsibility as the licensing authority, at its discretion, may require.

Article 4.

Internal Operating Procedures.

§ 2.15. There shall be evidence of a system of financial record keeping that is consistent with generally accepted accounting principles unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.16. There shall be a written policy, consistent with generally accepted accounting principles, for collection and disbursement of funds unless the facility is a state or local program operating as required by the State Auditor of Public Accounts.

§ 2.17. There shall be a system of financial record keeping that shows a separation of the facility's accounts from all other records.

Article 5.

Insurance.

§ 2.18. A facility shall maintain liability insurance covering the premises and the facility's operations.

§ 2.19. There shall be liability insurance on vehicles operated by the facility.

Article 6.

Bonding.

§ 2.20. Those members of the governing body and staff who have been authorized responsibility for handling the funds of the facility shall be bonded.

Article 7.

Fund-Raising.

§ 2.21. The facility shall not use residents in its fund-raising activities without written permission of legal guardian.

Article 8.

Relationship to Licensing Authority.

§ 2.22. The facility shall submit or make available to the licensing authority such reports and information as the licensing authority may require to establish compliance with these standards and the appropriate statutes.

§ 2.23. The governing body or its official representative shall notify the licensing authority(ies) within five working days of:

1. Any change in administrative structure or newly hired chief administrative officer; and

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2. Any pending changes in the program.

§ 2.24. In the event of a disaster, fire, emergency or any other condition at the facility that may jeopardize the health, safety and well-being of the children in care, the facility shall:

1. Take appropriate action to protect the health, safety and well-being of the children in care;
2. Take appropriate actions to remedy such conditions as soon as possible, including reporting to and cooperating with local health, fire, police or other appropriate officials; and
3. Notify the licensing authority(ies) of the conditions at the facility and the status of the residents as soon as possible.

Article 9.

Participation of Residents in Research.

§ 2.25. The facility shall establish and implement written policies and procedures regarding the participation of residents as subjects in research that are consistent with Chapter 13 of Title 37.1 of the Code of Virginia, unless the facility has established and implemented a written policy explicitly prohibiting the participation of residents as subjects of human research as defined by the above statute.

Article 10.

Resident's Records.

§ 2.26. A separate case record on each resident shall be maintained and shall include all correspondence relating to the care of that resident.

§ 2.27. Each case record shall be kept up to date and in a uniform manner.

§ 2.28. Case records shall be maintained in such manner as to be accessible to staff for use in working with the resident.

Article 11.

Confidentiality of Resident's Records.

§ 2.29. The facility shall make information available only to those legally authorized to have access to that information under federal and state laws.

§ 2.30. There shall be written policy and procedures to protect the confidentiality of records which govern acquiring information, access, duplication, and dissemination of any portion of the records. The policy shall specify what information is available to the resident.

Article 12.

Storage of Confidential Records.

§ 2.31. Records shall be kept in areas which are accessible only to authorized staff.

§ 2.32. Records shall be stored in a metal file cabinet or other metal compartment.

§ 2.33. When not in use, records shall be kept in a locked compartment or in a locked room.

Article 13.

Disposition of Residents' Records.

§ 2.34. Resident's records shall be kept in their entirety for a minimum of three years after the date of the discharge unless otherwise specified by state or federal requirements.

§ 2.35. Permanent information shall be kept on each resident even after the disposition of the resident's record unless otherwise specified by state or federal requirements. Such information shall include:

1. Resident's name;
2. Date and place of resident's birth;
3. Dates of admission and discharge;
4. Names and addresses of parents and siblings; and
5. Name and address of legal guardian.

§ 2.36. Each facility shall have a written policy to provide for the disposition of records in the event the facility ceases operation.

Article 14.

Residential Facilities for Children Serving Persons Over the Age of 17 Years.

§ 2.37. Residential facilities for children subject to Interdepartmental licensure/certification which are also approved to maintain in care persons over 17 years of age, shall comply with the requirements of the Interdepartmental Standards for the care of all residents, regardless of age, except that residential programs serving persons over 17 years of age, shall be exempt from this requirement when it is determined by the licensing/certification authority(ies) that the housing, staff and programming for such persons is maintained separately from the housing, staff and programming for the residents.

PART III. PERSONNEL.

Article 1.

Health Information.

§ 3.1. Health information required by these standards shall be maintained for the chief administrative officer, for all

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staff members who come in contact with residents or handle food, and for any individual who resides in a building occupied by residents including any such persons who are neither staff members nor residents of the facility.

Article 2.

Initial Tuberculosis Examination and Report.

§ 3.2. Within 30 days of employment or contact with residents each individual shall obtain an evaluation indicating the absence of tuberculosis in a communicable form except that an evaluation shall not be required for an individual who (i) has separated from employment with a facility licensed/certified by the Commonwealth of Virginia, (ii) has a break in service of six months or less, and (iii) submits the original statement of tuberculosis screening.

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

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

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

Article 3.

Subsequent Evaluations for Tuberculosis.

§ 3.6. Any individual who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms of four weeks duration or longer shall, within 30 days of exposure/development, receive an evaluation in accord with Part III, Article 2.

Article 4.

Physical or Mental Health of Personnel.

§ 3.7. At the request of the licensee/administrator of the facility or the licensing authority a report of examination by a licensed physician shall be obtained when there are indications that the care of residents may be jeopardized by the physical, mental, or emotional health of a specific individual.

§ 3.8. Any individual who, upon examination by a licensed physician or as result of tests, shows indication of a physical or mental condition which may jeopardize the safety of residents or which would prevent the performance of duties:

1. Shall immediately be removed from contact with residents and food served to residents ; and
2. Shall not be allowed contact with residents or food served to residents until the condition is cleared to the satisfaction of the examining physician as

evidenced by a signed statement from the physician.

Article 5. Qualifications.

§ 3.9. Standards in Part III, Articles 12-14 establishing minimum position qualifications shall be applicable to all facilities. In lieu of these minimum position qualifications, (i) facilities subject to the rules and regulations of the Virginia Department of Personnel and Training, or (ii) facilities subject to the rules and regulations of a local government personnel office may develop written minimum entry level qualifications in accord with the rules and regulations of the supervising personnel authority.

§ 3.10. Any person who assumes or is designated to assume the responsibilities of a staff position or any combination of staff positions described in these standards shall meet the qualifications of that position(s) and shall fully comply with all applicable standards for each function.

§ 3.11. When services or consultations are obtained on a contract basis they shall be provided by professionally qualified personnel.

Article 6. Job Descriptions.

§ 3.12. For each staff position there shall be a written job description which, at a minimum, shall include:

1. The job title;
2. The duties and responsibilities of the incumbent;
3. The job title of the immediate supervisor; and
4. The minimum knowledge, skills and abilities required for entry level performance of the job.

§ 3.13. A copy of the job description shall be given to each person assigned to that position at the time of employment or assignment.

Article 7. Written Personnel Policies and Procedures.

§ 3.14. The licensee shall approve written personnel policies.

§ 3.15. The licensee shall make its written personnel policies readily accessible to each staff member.

§ 3.16. The facility shall develop and implement written policies and procedures to assure that persons employed in or designated to assume the responsibilities of each staff position possess the knowledge, skills and abilities specified in the job description for that staff position.

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§ 3.17. Written policies and procedures related to child abuse and neglect shall be distributed to all staff members. These shall include:

1. Acceptable methods for management of resident behavior ;
2. Procedures for handling accusations against staff; and
3. Procedures for promptly referring suspected cases of child abuse and neglect to the local protective service unit and for cooperating with the unit during any investigation. (See § 5.143)

§ 3.18. Each staff member shall demonstrate a working knowledge of those policies and procedures that are applicable to his specific staff position.

Article 8. Personnel Records.

§ 3.19. A separate up-to-date personnel record shall be maintained for each staff member. The record shall include:

1. A completed employment application form or other written material providing:
 - a. Identifying information (name, address, phone number, social security number, and any names previously utilized);
 - b. Educational history; and
 - c. Employment history.
2. Written references or notations of oral references;
3. Reports of required health examinations;
4. Annual performance evaluations; and
5. Documentation of staff development activities.

§ 3.20. Each personnel record shall be retained in its entirety for two years after employment ceases.

§ 3.21. Information sufficient to respond to reference requests on separated employees shall be permanently maintained. Information shall minimally include name, social security number, dates of employment, and position(s) held.

Article 9. Staff Development.

§ 3.22. New employees, relief staff, volunteers and students, within one calendar month of employment, shall be given orientation and training regarding the objectives and philosophy of the facility, practices of confidentiality,

other policies and procedures that are applicable to their specific positions, and their specific duties and responsibilities.

§ 3.23. Provision shall be made for staff development activities, designed to update staff on items in § 3.22 and to enable them to perform their job responsibilities adequately. Such staff development activities include, but shall not necessarily be limited to, supervision and formal training.

§ 3.24. Regular supervision of staff shall be provided.

§ 3.25. Regular supervision of staff shall not be the only method of staff development.

§ 3.26. Participation of staff, volunteers and students in orientation, training and staff development activities shall be documented.

Article 10. Staff Supervision of Children.

§ 3.27. No member of the child care staff shall be on duty more than six consecutive days between rest days except in an emergency except:

1. A child care staff member may attend training **FOLLOWING WORKING AT THE FACILITY** without a rest day. However, the staff member shall not work more than 10 consecutive days between rest days including working at the facility and training.
2. A child care staff member may accompany an excursion **FOLLOWING WORKING AT THE FACILITY** without a rest day. However, the staff member shall not work more than 14 consecutive days between rest days including working at the facility and the excursion.
3. A child care staff member accompanying an excursion shall not work at the facility for more than two consecutive days **PRIOR TO THE EXCURSION**.
4. A child care staff member may return to work at the facility without a rest day **AFTER ACCOMPANYING AN EXCURSION OR ATTENDING TRAINING**. However, a staff member who returns to work at the facility shall not work more than six consecutive days between rest days including excursion and training days.

§ 3.28. Child care staff shall have an average of not less than two rest days per week in any four-week period. This shall be in addition to vacation time and holidays.

§ 3.29. Child care staff other than live in staff shall not be on duty more than 16 consecutive hours except in an emergency.

§ 3.30. There shall be at least one responsible adult on the

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premises and on duty at all times that one or more children are present.

§ 3.31. Each facility shall develop and implement written policies and procedures which address deployment of staff and supervision of children. The number of children being supervised may vary among staff members except that the total number of child care staff on duty shall not be less than the minimum number required by §§ 3.33 and 3.34 to supervise the total number of children on the premises and participating in off campus, facility sponsored activities.

§ 3.32. Written policies and procedures governing deployment of staff shall be reviewed and approved by the regulatory authority prior to implementation.

§ 3.33. During the hours that children normally are awake there shall be no less than one child care staff member awake, on duty and responsible for supervision of every 10 children, or portion thereof, on the premises or participating in off campus, facility sponsored activities except that:

1. In approved independent living programs, there shall be one child care staff member awake, on duty and responsible for supervision of every 15 children on the premises or participating in off campus, facility sponsored activities;
2. For children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every three children who are on the premises or participating in off campus, facility sponsored activities except that this requirement shall not apply to severely, multihandicapped, nonambulatory children; and
3. For severely multihandicapped, nonambulatory children under four years of age, there shall be one child care staff member awake, on duty and responsible for supervision of every six children.

§ 3.34. Supervision during sleeping hours.

A. During the hours that residents normally are sleeping there shall be no less than one child care staff member on duty and responsible for supervision of every 16 children, or portion thereof, on the premises.

B. There shall be at least one child care staff member awake and on duty:

1. In each building where 30 or more children are sleeping,
2. On each floor where 30 or more children are sleeping, and
3. On each major wing of each floor where 30 or more children are sleeping.

§ 3.35. Emergency telephone numbers.

A. When residents are away from the facility they and the adults responsible for their care during that absence shall be furnished with a telephone number where a responsible facility staff member or other responsible adult may be reached at all times except that this requirement shall not apply to secure detention facilities.

B. When children are on the premises of the facility, the staff on duty shall be furnished with a telephone number where the administrator or his designee may be reached at all times.

§ 3.36. Children shall be provided privacy from routine sight supervision by staff members of the opposite gender while bathing, dressing, or conducting toileting activities. This requirement shall not apply to medical personnel performing medical procedures, to staff providing assistance to infants, or to staff providing assistance to children whose physical or mental disabilities dictate the need for assistance with these activities as justified in the client's record.

§ 3.37. Searches.

A. If a facility conducts pat downs it shall develop and implement written policies and procedures governing them. A facility that does not conduct pat downs shall have a written policy prohibiting them.

B. Written policies and procedures governing pat downs shall be reviewed and approved by the regulatory authority prior to implementation.

C. Written policies and procedures governing pat downs shall include:

1. A requirement that pat downs be limited to instances where they are necessary to prohibit contraband;
2. A listing of the specific circumstances when pat downs are permitted;
3. A statement that pat downs shall be conducted only in the specific circumstances enumerated in the written policies and procedures;
4. A requirement that pat downs be conducted by personnel of the same gender as the client(s) being searched;
5. A listing of the personnel authorized to conduct pat downs;
6. A statement that pat downs shall be conducted only by personnel authorized to conduct searches by the written policies and procedures;
7. A requirement that witnesses, if any, be of the

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same gender as the client(s) being searched; and

8. Provisions to ensure the client's privacy.

D. Strip searches and body cavity searches are prohibited except:

1. As permitted by other applicable state regulations, or
2. As ordered by a court of competent jurisdiction.

Article 11. The Chief Administrative Officer.

§ 3.38. The chief administrative officer shall be responsible to the governing body for:

1. The overall administration of the program;
2. Implementation of all policies;
3. Maintenance of the physical plant; and
4. Fiscal management of the residential facility for children.

§ 3.39. Duties of the chief administrative officer may be delegated to qualified subordinate staff.

§ 3.40. Duties delegated by the chief administrative officer shall be reflected in the job description of the position assigned each delegated function.

§ 3.41. A qualified staff member shall be designated to assume responsibility for the operation of the facility in the absence of the chief administrative officer.

Article 12. The Program Director.

§ 3.42. The program director shall be responsible for the development and implementation of the programs and services (See Part V) offered by the residential facility for children.

§ 3.43. A program director appointed after July 1, 1981, shall have:

1. A baccalaureate degree from an accredited college or university with two years of successful work experience with children in the field of institutional management, social work, education or other allied profession; or
2. A graduate degree from an accredited college or university in a profession related to child care and development; or
3. A license or certification in the Commonwealth of Virginia as a drug or alcoholism counselor/worker if

the facility's purpose is to treat drug abuse or alcoholism.

§ 3.44. Any qualified staff member, including the chief administrative officer, may serve as the program director.

§ 3.45. When a facility is licensed/certified to care for 13 or more residents, a full-time, qualified staff member shall fulfill the duties of the program director.

Article 13. Child and Family Service Worker(s).

§ 3.46. If not provided by external resources in accord with § 5.45, counseling and social services (see § 5.43), shall be provided by a staff member(s) qualified to provide such services.

§ 3.47. If employment begins after July 1, 1981, the Child and Family Service Worker shall have:

1. A graduate degree in social work, psychology, counseling or a field related to family services or child care and development; or
2. A baccalaureate degree and two years of successful experience in social work, psychology, counseling or a field related to family services or child care and development (In lieu of two years of experience, the person may work under the direct supervision of a qualified supervisor for a period of two years); or
3. A license or certificate in the Commonwealth of Virginia to render services as a drug abuse or alcoholism counselor/worker only in facilities which are certified to provide drug abuse or alcoholism counseling; or
4. A license or certificate when required by law issued in the Commonwealth of Virginia to render services in the field of:

- a. Social Work, or
- b. Psychology, or
- c. Counseling (individual, group or family).

Article 14. Child Care Staff.

§ 3.48. In each child care unit a designated staff member shall have responsibility for the development of the daily living program within the child care unit.

§ 3.49. A designated staff member shall be responsible for the coordination of all services offered to each resident.

§ 3.50. A designated staff member(s) shall have responsibility for the orientation, training and supervision of child care workers.

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§ 3.51. An individual employed after July 1, 1981, to supervise child care staff shall have:

1. A baccalaureate degree from an accredited college or university and two years experience in the human services field, at least one of which shall have been in a residential facility for children; or
2. A high school diploma or a General Education Development Certificate (G.E.D.) and a minimum of five years experience in the human service field with at least two years in a residential facility for children.

§ 3.52. The child care worker shall have direct responsibility for guidance and supervision of the children to whom he is assigned. This shall include:

1. Overseeing physical care;
2. Development of acceptable habits and attitudes;
3. Management of resident behavior ; and
4. Helping to meet the goals and objectives of any required service plan.

§ 3.53. A child care worker shall be no less than 18 years of age.

§ 3.54. A child care worker shall:

1. Be a high school graduate or have a General Education Development Certificate (G.E.D.) except that individuals employed prior to the effective date of these standards shall meet this requirement by July 1, 1986; and
2. Have demonstrated, through previous life and work experiences, an ability to maintain a stable environment and to provide guidance to children in the age range for which the child care worker will be responsible.

Article 15. Relief Staff.

§ 3.55. Sufficient qualified relief staff shall be employed to maintain required staff/child ratios during:

1. Regularly scheduled time off of permanent staff, and
2. Unscheduled absences of permanent staff.

Article 16. Medical Staff.

§ 3.56. Services of a licensed physician shall be available for treatment of residents as needed.

§ 3.57. Any nurse employed shall hold a current nursing

license issued by the Commonwealth of Virginia.

§ 3.58. At all times that children are present there shall be at least one responsible adult on the premises who has received within the past three years a basic certificate in standard first-aid (Multi-Media, Personal Safety, or Standard First Aid Modular) issued by the American Red Cross or other recognized authority except that this requirement does not apply during those hours when a licensed nurse is present at the facility.

§ 3.59. At all times that children are present there shall be at least one responsible adult on the premises who has received a certificate in cardiopulmonary resuscitation issued by the American Red Cross or other recognized authority.

Article 17. Recreation Staff.

§ 3.60. There shall be designated staff responsible for organized recreation who shall have:

1. Experience in working with and providing supervision to groups of children with varied recreational needs and interests;
2. A variety of skills in group activities;
3. A knowledge of community recreational facilities; and
4. An ability to motivate children to participate in constructive activities.

Article 18. Volunteers and Students Receiving Professional Training.

§ 3.61. If a facility uses volunteers or students receiving professional training it shall develop written policies and procedures governing their selection and use. A facility that does not use volunteers shall have a written policy stating that volunteers will not be utilized.

§ 3.62. The facility shall not be dependent upon the use of volunteers/students to ensure provision of basic services.

§ 3.63. The selection of volunteers/students and their orientation, training, scheduling, supervision and evaluation shall be the responsibility of designated staff members.

§ 3.64. Responsibilities of volunteers/students shall be clearly defined.

§ 3.65. All volunteers/students shall have qualifications appropriate to the services they render based on experience or orientation.

§ 3.66. Volunteers/students shall be subject to all regulations governing confidential treatment of personal

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information.

§ 3.67. Volunteers/students shall be informed regarding liability and protection.

Article 19. Support Functions.

§ 3.68. Facilities shall provide for support functions including, but not limited to, food service, maintenance of buildings and grounds, and housekeeping.

§ 3.69. All food handlers shall comply with applicable State Health Department regulations and with any locally adopted health ordinances.

§ 3.70. Child care workers and other staff may assume the duties of service personnel only when these duties do not interfere with their responsibilities for child care.

§ 3.71. Residents shall not be solely responsible for support functions.

PART IV. RESIDENTIAL ENVIRONMENT.

Article 1. Location.

§ 4.1. A residential facility for children shall be located so that it is reasonably accessible to schools, transportation, medical and psychiatric resources, churches, and recreational and cultural facilities.

Article 2. Buildings, Inspections and Building Plans.

§ 4.2. All buildings and installed equipment shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed/certified purposes.

§ 4.3. At the time of the original application and at least annually thereafter the buildings shall be inspected and approved by:

1. State fire officials or local fire authorities, as applicable, whose inspection shall determine compliance with the "Virginia Statewide Fire Prevention Code"; and
2. State or local health authorities, whose inspection and approval shall include:
 - a. General sanitation;
 - b. The sewage disposal system;
 - c. The water supply;

d. Food service operations; and

e. Swimming pools.

§ 4.4. The buildings shall be suitable to house the programs and services provided.

Article 3. Plans and Specifications for New Buildings and Additions, Conversions, and Structural Modifications to Existing Buildings.

§ 4.5. Building plans and specifications for new construction, conversion of existing buildings, and any structural modifications or additions to existing licensed buildings shall be submitted to and approved by the licensing/certification authority and the following authorities, where applicable, before construction begins:

1. Local building officials;
2. Local fire departments;
3. Local or state health departments; and
4. Office of the State Fire Marshal.

§ 4.6. Documentation of the approvals required by § 4.5 shall be submitted to the licensing authority(ies).

Article 4. Heating Systems, Ventilation and Cooling Systems.

§ 4.7. Heat shall be evenly distributed in all rooms occupied by the residents such that a temperature no less than 65°F is maintained, unless otherwise mandated by state or federal authorities.

§ 4.8. Natural or mechanical ventilation to the outside shall be provided in all rooms used by residents.

§ 4.9. All doors and windows capable of being used for ventilation shall be fully screened unless screening particular doors and windows is explicitly prohibited in writing by state or local fire authorities and those doors and windows are not used for ventilation.

§ 4.10. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 85°F.

Article 5. Lighting.

§ 4.11. Artificial lighting shall be by electricity.

§ 4.12. All areas within buildings shall be lighted for safety.

§ 4.13. Night lights shall be provided in halls and

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bathrooms.

§ 4.14. Lighting shall be sufficient for the activities being performed in a specific area.

§ 4.15. Operable flashlights or battery lanterns shall be available for each staff member on the premises between dusk and dawn for use in emergencies.

§ 4.16. Outside entrances and parking areas shall be lighted for protection against injuries and intruders.

Article 6. Plumbing and Toilet Facilities.

§ 4.17. All plumbing shall be maintained in good operational condition.

§ 4.18. There shall be an adequate supply of hot and cold running water available at all times.

§ 4.19. Precautions shall be taken to prevent scalding from running water. In all newly constructed or renovated facilities mixing faucets shall be installed.

§ 4.20. There shall be at least one toilet, one hand basin and one shower or bathtub in each living unit, and there shall be at least one bathroom equipped with a bathtub in each facility.

§ 4.21. There shall be at least one toilet, one hand basin and one shower or tub for every eight residents.

§ 4.22. In any facility constructed or reconstructed after July 1, 1981, except secure detention facilities there shall be one toilet, one hand basin and one shower or tub for every four residents.

§ 4.23. When a separate bathroom is not provided for staff on duty less than 24 hours, the maximum number of staff members on duty in the living unit at any one time shall be counted in the determination of the number of toilets and hand basins.

§ 4.24. There shall be at least one mirror securely fastened to the wall at a height appropriate for use in each room where hand basins are located except in security rooms in hospitals, secure detention facilities and learning centers.

§ 4.25. At all times an adequate supply of personal necessities shall be available to the residents for purposes of personal hygiene and grooming; such as, but not limited to, soap, toilet tissue, toothpaste, individual tooth brushes, individual combs and shaving equipment.

§ 4.26. Clean, individual washclothes and towels shall be available once each week or more often if needed.

Article 7. Facilities and Equipment for Residents with Special

Toileting Needs.

§ 4.27. When residents are in care who are not toilet trained:

1. Provision shall be made for sponging, diapering and other similar care on a nonabsorbent changing surface which shall be cleaned with warm soapy water after each use.

2. A covered diaper pail, or its equivalent, with leakproof disposable liners shall be available. If both cloth and disposable diapers are used there shall be a diaper pail for each.

3. Adapter seats and toilet chairs shall be cleaned with warm soapy water immediately after each use.

4. Staff shall thoroughly wash their hands with warm soapy water immediately after assisting an individual child or themselves with toileting.

Article 8. Sleeping Areas.

§ 4.28. When residents are four years of age or older, boys shall have separate sleeping areas from girls.

§ 4.29. No more than four children may share a bedroom or sleeping area.

§ 4.30. When a facility is not subject to the Virginia Public Building Safety Regulations or the Uniform Statewide Building Code, children who are dependent upon wheelchairs, crutches, canes or other mechanical devices for assistance in walking shall be assigned sleeping quarters on ground level and provided with a planned means of effective egress for use in emergencies.

§ 4.31. There shall be sufficient space for beds to be at least three feet apart at the head, foot and sides and five feet apart at the head, foot and sides for double-decker beds.

§ 4.32. In facilities previously licensed by the Department of Social Services and in facilities established, constructed or reconstructed after July 1, 1981, sleeping quarters shall meet the following space requirements:

1. There shall be not less than 450 cubic feet of air space per person;

2. There shall be not less than 80 square feet of floor area in a bedroom accommodating only one person;

3. There shall be not less than 60 square feet of floor area per person in rooms accommodating two or more persons; and

4. All ceilings shall be at least 7-1/2 feet in height.

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§ 4.33. Each child shall have a separate, clean, comfortable bed equipped with mattress, pillow, blanket(s), bed linens, and, if needed, a waterproof mattress cover.

§ 4.34. Bed linens shall be changed at least every seven days or more often, if needed.

§ 4.35. Mattresses and pillows shall be clean and those placed in service after July 1, 1981, shall also be fire retardant as evidenced by documentation from the manufacturer.

§ 4.36. Cribs shall be provided for residents under two years of age.

§ 4.37. Each resident shall be assigned drawer space and closet space, or their equivalent, accessible to the sleeping area for storage of clothing and personal belongings.

§ 4.38. The sleeping area environment shall be conducive to sleep and rest.

§ 4.39. Smoking by any person shall be prohibited in sleeping areas.

Article 9. Privacy for Residents.

§ 4.40. Where bathrooms are not designated for individual use, each toilet shall be enclosed for privacy except in secure detention facilities.

§ 4.41. Where bathrooms are not designated for individual use, bathtubs and showers, except in secure detention facilities, shall provide visual privacy for bathing by use of enclosures, curtains or other appropriate means.

§ 4.42. Windows in bathrooms shall provide for privacy.

§ 4.43. Every sleeping area shall have a door that may be closed for privacy or quiet and this door shall be readily openable in case of fire or other emergency.

§ 4.44. Windows in sleeping and dressing areas shall provide for privacy.

Article 10. Living Rooms/Indoor Recreation Space.

§ 4.45. Each living unit shall contain a living room or an area for informal use for relaxation and entertainment. The furnishings shall provide a comfortable, home-like environment that is age appropriate.

§ 4.46. In facilities licensed to care for more than 12 residents there shall be indoor recreational space that contains recreational equipment appropriate to the ages and interests of the residents. Such indoor recreational space shall be distinct from the living room in each living unit required by § 4.45, but such space shall not be required in every living unit.

Article 11. Study Space.

§ 4.47. Study space shall be provided in facilities serving a school age population and may be assigned in areas used interchangeably for other purposes.

§ 4.48. Study space shall be well lighted, quiet, and equipped with at least tables or desks and chairs.

Article 12. Kitchen and Dining Areas.

§ 4.49. Meals shall be served in areas equipped with sturdy tables and benches or chairs of a size appropriate for the sizes and ages of the residents.

§ 4.50. Adequate kitchen facilities and equipment shall be provided for preparation and serving of meals.

§ 4.51. Walk-in refrigerators, freezers, and other enclosures shall be equipped to permit emergency exits.

Article 13. Laundry Areas.

§ 4.52. If laundry is done at the facility, appropriate space and equipment in good repair shall be provided.

Article 14. Storage.

§ 4.53. Space shall be provided for safe storage of items such as first-aid equipment, household supplies, recreational equipment, luggage, out-of-season clothing, and other materials.

Article 15. Staff Quarters.

§ 4.54. A separate (private) bathroom and bedroom shall be provided for staff and their families when staff are required to be in the living unit for 24-hours or more except, that when there are no more than four persons, including staff and family of staff, residing in, or on duty, in the living unit, a private bathroom is not required for staff.

§ 4.55. Off duty staff and members of their families shall not share bedrooms with residents.

§ 4.56. When 13 or more residents reside in one living unit a separate (private) living room shall be provided for child care staff who are required to be in the living unit for 24 hours or more.

§ 4.57. When child care staff are on duty for less than 24 hours, a bed shall be provided for use of each staff member on duty during night hours unless such staff member is required to remain awake.

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Article 16. Office Space.

§ 4.58. Space shall be provided for administrative activities including provision for storage of records and materials (See Part II, Article 12).

Article 17. Buildings and Grounds.

§ 4.59. Buildings and grounds, including roads, pavements, parking lots, stairways, railings and other potentially hazardous areas, shall be safe, properly maintained and free of clutter and rubbish.

§ 4.60. There shall be outdoor recreational space appropriately equipped for the residents.

Article 18. Equipment and Furnishings.

§ 4.61. All furnishings and equipment shall be safe, easy to clean, and suitable to the ages and number of residents.

§ 4.62. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which children sleep or participate in programs.

§ 4.63. The facility shall have a written policy governing the possession and use of firearms, pellet guns, air rifles and other weapons on the premises of the facility that shall provide that no firearms, pellet guns, air rifles, or other weapons, shall be permitted on the premises of the facility unless they are:

1. In the possession of licensed security personnel; or
2. Kept under lock and key; or
3. Used under the supervision of a responsible adult in accord with policies and procedures developed by the facility for their lawful and safe use.

Article 19. Housekeeping and Maintenance.

§ 4.64. The interior and exterior of all buildings, including required locks and mechanical devices, shall be maintained in good repair.

§ 4.65. The interior and exterior of all buildings shall be kept clean and free of rubbish.

§ 4.66. All buildings shall be well-ventilated and free of stale, musty or foul odors.

§ 4.67. Adequate provisions shall be made for the collection and legal disposal of garbage and waste materials.

§ 4.68. Buildings shall be kept free of flies, roaches, rats

and other vermin.

§ 4.69. All furnishings, linens, and indoor and outdoor equipment shall be kept clean and in good repair.

§ 4.70. A sanitizing agent shall be used in the laundering of bed, bath, table and kitchen linens.

§ 4.71. Lead based paint shall not be used on any surfaces and items with which residents and staff come in contact.

Article 20. Farm and Domestic Animals.

§ 4.72. Horses and other animals maintained on the premises shall be quartered at a reasonable distance from sleeping, living, eating, and food preparation areas.

§ 4.73. Stables and corrals shall be located so as to prevent contamination of any water supply.

§ 4.74. Manure shall be removed from stalls and corrals as often as necessary to prevent a fly problem.

§ 4.75. All animals maintained on the premises shall be tested, inoculated and licensed as required by law.

§ 4.76. The premises shall be kept free of stray domestic animals.

§ 4.77. Dogs and other small animal pets and their quarters shall be kept clean.

Article 21. Primitive Campsites.

§ 4.78. The standards in Article 21 through Article 28 are applicable exclusively to the residential environment and equipment at primitive campsites. Permanent buildings and other aspects of the residential environment at a wilderness camp shall comply with the remaining standards in Part IV.

§ 4.79. All campsites shall be well drained and free from depressions in which water may stand.

§ 4.80. Natural sink-holes and other surface collectors of water shall be either drained or filled to prevent the breeding of mosquitoes.

§ 4.81. Campsites shall not be in proximity to conditions that create or are likely to create offensive odors, flies, noise, traffic, or other hazards.

§ 4.82. The campsite shall be free from debris, noxious plants, and uncontrolled weeds or brush.

Article 22. Water in Primitive Campsites.

§ 4.83. Drinking water used at primitive campsites and on

hikes away from permanent campsites shall be from a source known to be safe (free of coliform organisms) or shall be rendered safe before use in a manner approved by the Virginia Department of Health.

§ 4.84. An adequate supply of water, under pressure where possible, shall be provided at the cooking area for handwashing, dishwashing, food preparation and drinking.

Article 23.

Food Service Sanitation in Primitive Campsites.

§ 4.85. Food shall be obtained from approved sources and shall be properly identified.

§ 4.86. Milk products shall be pasteurized.

§ 4.87. Food and drink shall be maintained and stored so as to prevent contamination and spoilage.

§ 4.88. The handling of food shall be minimized through the use of utensils.

§ 4.89. Fruits and vegetables shall be properly washed prior to use.

§ 4.90. Food and food containers shall be covered and stored off the ground and on clean surfaces. Refrigerated food shall also be covered.

§ 4.91. Sugar and other condiments shall be packaged or served in closed dispensers.

§ 4.92. Poisonous and toxic materials shall be properly used, properly identified and stored separately from food.

§ 4.93. Persons with wounds or communicable diseases shall be prohibited from handling food.

§ 4.94. Persons who handle food and eating utensils for the group shall maintain personal cleanliness, shall keep hands clean at all times, and shall thoroughly wash their hands with soap and water after each visit to the toilet.

§ 4.95. Food contact surfaces shall be kept clean.

§ 4.96. All eating utensils and cookware shall be properly stored.

§ 4.97. Disposable or single use dishes, receptacles and utensils shall be properly stored, handled and used only once.

§ 4.98. Eating utensils shall not be stored with food or other materials and substances.

§ 4.99. The use of a common drinking cup shall not be permitted.

§ 4.100. Only food which can be maintained in a wholesome condition with the equipment available shall be

used at primitive camps.

§ 4.101. Ice which comes in contact with food or drink shall be obtained from an approved source and shall be made, delivered, stored, handled, and dispensed in a sanitary manner and be free from contamination.

§ 4.102. When ice and ice chests are used, meats and other perishable foods shall not be stored for more than 24 hours.

§ 4.103. Eating utensils and cookware shall be washed and sanitized after each use.

§ 4.104. No dish, receptacle or utensil used in handling food for human consumption shall be used or kept for use if chipped, cracked, broken, damaged or constructed in such a manner as to prevent proper cleaning and sanitizing.

§ 4.105. Solid wastes which are generated in primitive camps shall be disposed of at an approved sanitary landfill or similar disposal facility. Where such facilities are not available, solid wastes shall be disposed of daily by burial under at least two feet of compacted earth cover in a location which is not subject to inundation by flooding.

Article 24.

Toilet Facilities in Primitive Campsites.

§ 4.106. Where a water supply is not available sanitary type privies or portable toilets shall be provided. All such facilities shall be constructed as required by the Virginia Department of Health.

§ 4.107. All facilities provided for excreta and liquid waste disposal shall be maintained and operated in a sanitary manner to eliminate possible health or pollution hazards, to prevent access of flies and animals to their contents, and to prevent fly breeding.

§ 4.108. Privies shall be located at least 150 feet from a stream, lake or well and at least 75 feet from a sleeping or housing facility.

§ 4.109. Primitive campsites which are not provided with approved permanent toilet facilities shall have a minimum ratio of one toilet seat for every 15 persons.

§ 4.110. If chemical control is used to supplement good sanitation practices, proper pesticides and other chemicals shall be used safely and in strict accordance with label instructions.

Article 25.

Heating in Primitive Campsites.

§ 4.111. All living quarters and service structures at primitive campsites shall be provided with properly installed, operable, heating equipment.

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§ 4.112. No portable heaters other than those operated by electricity shall be used.

§ 4.113. Any stoves or other sources of heat utilizing combustible fuel shall be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases.

§ 4.114. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there shall be a concrete slab, installed metal sheet, or other fireproof materials on the floor under each stove and extending at least 18 inches beyond the perimeter of the base of the stove.

§ 4.115. Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stove-pipe shall be of fireproof material.

§ 4.116. A vented metal collar or other insulating device shall be installed around a stove pipe or vent passing through a wall, ceiling, floor or roof to prevent melting or combustion.

§ 4.117. A vented collar, insulating device, or chimney shall extend above the peak of the roof or otherwise be constructed in a manner which allows full draft of smoke.

§ 4.118. When a heating system has automatic controls the controls shall be of the type which will cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 4.119. All heating equipment shall be maintained and operated in a safe manner to prevent the possibility of fire.

Article 26.

Sleeping Areas and Equipment in Primitive Campsites.

§ 4.120. Bedding shall be clean, dry, and sanitary.

§ 4.121. Bedding shall be adequate to ensure protection and comfort in cold weather.

§ 4.122. If used, sleeping bags shall be fiberfill and rated for 0°F.

§ 4.123. Linens shall be changed as often as required for cleanliness and sanitation but not less frequently than once a week.

§ 4.124. Bedwetters shall have their bedding changed or dried as often as it is wet.

§ 4.125. If mattresses are used they shall be clean.

§ 4.126. Mattresses placed in service after July 1, 1981, shall be fire retardant as evidenced by documentation from the manufacturer.

§ 4.127. A mattress cover shall be provided for each mattress.

§ 4.128. Sleeping areas shall be protected by screening or other means to prevent admittance of flies and mosquitos.

§ 4.129. A separate bed, bunk, or cot shall be made available for each person.

Article 27.

Clothing in Primitive Campsites.

§ 4.130. Each resident shall be provided with an adequate supply of clean clothing suitable for outdoor living appropriate to the geographic location and season.

§ 4.131. Sturdy, water-resistant, outdoor shoes or boots shall be provided for each resident.

§ 4.132. An adequate personal storage area shall be available for each resident.

Article 28.

Fire Prevention in Primitive Campsites.

§ 4.133. With the consultation and approval of the local fire authority a written fire plan shall be established indicating the campsite's fire detection system, fire alarm and evacuation procedures.

§ 4.134. The fire plan shall be implemented through the conduct of fire drills at the campsite at least once each month.

§ 4.135. A record of all fire drills shall be maintained.

§ 4.136. The record for each fire drill shall be retained two years subsequent to the drill.

§ 4.137. An approved 2A 10BC fire extinguisher in operable condition shall be maintained immediately adjacent to the kitchen or food preparation area.

§ 4.138. Fire extinguishers of a 2A 10BC rating shall be maintained so that it is never necessary to travel more than 75 feet to a fire extinguisher from combustion-type heating devices, campfires, or other combustion at the primitive campsite.

PART V. PROGRAMS AND SERVICES.

Article I: Criteria for Admission.

§ 5.1. Each residential facility for children except secure detention facilities shall have written criteria for admission that shall be made available to all parties when placement for a child is being considered. Such criteria shall include:

1. A description of the population to be served;

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2. A description of the types of services offered; and

3. Intake and admission procedures including necessary referral documentation.

§ 5-2. No child with special needs shall be accepted for placement by a facility unless that facility has a program appropriate to meet those needs or arrangements are made for meeting those needs through community resources unless the child's admission is required by court order.

§ 5-3. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5-4. A facility shall not knowingly accept into care a child whose health or behavior shall present a clear and present danger to the child or others residing in the facility unless the facility is licensed or certified to provide such care or a child's admission is required by court order. (See requirements for certification or special licensure.)

Article 2:

Admission of Blind or Visually Impaired Children.

§ 5-5. When a blind or visually impaired child is admitted to a residential facility for children, the facility shall obtain the services of the staff of the Virginia Department for the Visually Handicapped as consultants for assessment, program planning and prescribed teaching (if not previously obtained).

§ 5-6. Provision of the services of the Department for the Visually Handicapped shall be documented in the resident's record.

§ 5-7. If the services of the Department for the Visually Handicapped are not obtained the resident's placement shall be considered inappropriate.

Article 3:

Interstate Compact on the Placement of Children.

§ 5-8. No child shall be accepted for placement from outside of the Commonwealth of Virginia without the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, except that this section shall not apply when the Interstate Compact Relating to Juveniles applies.

§ 5-9. Documentation of approval of the compact administrator shall be retained in the resident's record.

Article 4:

Documented Study of the Child.

§ 5-10. Acceptance for care, other than emergency or diagnostic care, shall be based on an evaluation of a

documented study of the child except that the requirements of this article shall not apply (i) to temporary care facilities; or (ii) to secure detention facilities.

§ 5-11. If a facility is specifically approved to provide residential respite care, the acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

§ 5-12. In facilities required to base their acceptance for care on a documented study of the child, at the time of a routine admission or 30 days after an emergency admission each resident's record shall contain all of the elements of the documented study.

§ 5-13. The documented study of the child shall include all of the following elements (When information on the child is not available, the reason shall be documented in the resident's record):

1. A formal request or written application for admission;
2. Identifying information documented on a face sheet (see § 5-14);
3. Physical examination as specified in § 5-50;
4. Medical history (see § 5-15);
5. A statement, such as a report card, concerning the resident's recent scholastic performance, including a current Individual Education Plan (IEP), if applicable;
6. Results of any psychiatric or psychological evaluations of the resident, if applicable;
7. Social and developmental summary (see § 5-16);
8. Reason for referral; and
9. Rationale for acceptance.

§ 5-14. Identifying information on a face sheet shall include:

1. Full name of resident;
2. Last known residence;
3. Birthdate;
4. Birthplace;
5. Sex of resident;
6. Racial and national background;
7. Resident's social security number; -

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8. Religious preference of resident or parents; -

9. Custody status indicating name and address of legal guardian, if any;

10. Names, addresses and telephone numbers for emergency contacts; parents; legal guardians or representative of the child-placing agency, as applicable; and

11. Date of admission.

§ 5.15. A medical history shall include:

1. Serious illnesses and chronic conditions of the resident's parents and siblings, if known;

2. Past serious illnesses, infectious diseases, serious injuries, and hospitalizations of the resident;

3. Psychological, psychiatric and neurological examinations, if applicable;

4. Name, address and telephone number of resident's former physician(s), when information is available; and

5. Name, address and telephone number of resident's former dentist(s), when information is available.

§ 5.16. A social and developmental summary shall include:

1. Description of family structure and relationships;

2. Previous placement history;

3. Current behavioral functioning including strengths, talents, and problems;

4. Documentation of need for care apart from the family setting;

5. Names, address(es), Social Security numbers, and marital status of parents; and

6. Names, ages, and sex of siblings.

Article 5.

Preplacement Activities Documentation.

§ 5.17. At the time of the admission, except emergency admissions, involuntary admissions to security settings or admissions by court order the facility shall provide evidence of its cooperation with the placing agency in preparing the child and the family for the child's admission by documenting the following:

1. A preplacement visit by the resident accompanied by a family member, an agency representative or other responsible adult;

2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the residents and activities; and

3. Written confirmation of the admission decision to the family or legal guardian and to the placing agency.

Article 6.

Authority to Accept Children.

§ 5.18. Children shall be accepted only by court order or by written placement agreement with legal guardians except that this requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law. (See Part V, Article 9)

Article 7.

Written Placement Agreement.

§ 5.19. At the time of admission the resident's record shall contain the written placement agreement from the individual or agency having custody or a copy of the court order, or both, authorizing the resident's placement.

§ 5.20. The written placement agreement shall:

1. Give consent for the resident's placement in the facility designating the name and physical location of the facility and the name of the resident;

2. Recognize the rights of each of the parties involved in the placement clearly defining areas of joint responsibility in order to support positive placement goals;

3. Include financial responsibility, where applicable;

4. Specify the arrangements and procedures for obtaining consent for necessary medical, dental and surgical treatment or hospitalization;

5. Address the matter of all absences from the facility and shall specify the requirements for notifying or obtaining approval of the party having legal responsibility for the resident. If there are to be regular and routine overnight visits away from the facility without staff supervision the agreement must state that advance approval of the individual(s) or agency legally responsible for the resident is required.

Article 8.

Emergency Admissions.

§ 5.21. Facilities other than temporary care facilities or secure detention facilities receiving children under emergency circumstances shall meet the following requirements:

1. Have written policies and procedures governing such admissions; and

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2. Place in each resident's record a written request for care or documentation of an oral request for care.

Article 9: Temporary Care Facility.

§ 5.22. At the time of admission to a temporary care facility the following shall be documented in the child's record:

1. A written request for admission or documentation of an oral request for care;

2. If the facility is licensed pursuant to Chapter 10 of Title 63.1 of the Code of Virginia as a Child Caring Institution the facility shall obtain and document verbal approval for placement from the legal guardian within eight hours of the child's arrival at the facility and a written placement agreement shall be completed and signed by the legal guardian and facility representative within 24 hours of the child's arrival or by the end of the next business day after the child's arrival, whichever is later;

3. Identifying information documented on a face sheet which shall include:

- a. Full name of resident;
- b. Birthdate;
- c. Sex of resident;
- d. Racial/ethnic background;
- e. Last known address;
- f. Names and addresses of persons or agencies to contact in case of emergency;
- g. Date of admission; and
- h. Resident's social security number;

4. The resident's health status including:

- a. A statement of known and obvious illnesses and handicapping conditions;
- b. A statement of medications currently being taken;
- c. A statement of the resident's general health status; and
- d. Name, address and telephone number of the resident's physician, if known; and

5. A statement describing the resident's need for immediate temporary care.

§ 5.23. When identifying information is not available the

reason shall be documented on the face sheet.

Article 10: Discharge.

§ 5.24. If a facility is specifically approved to provide residential respite care a resident will be discharged when the resident and his legal guardians no longer intend to use the facility's services.

§ 5.25. All facilities, except for secure detention facilities, shall have written criteria for termination of care that shall include:

- 1. Criteria for a resident's completion of the program as described for compliance with § 2.5; and
- 2. Conditions under which a resident may be discharged before completing the program.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction prior to the planned discharge date each resident's record shall contain the following:

- 1. Documentation that the termination of care has been planned with the parent/ legal guardian/child-placing agency and with the resident; and
- 2. A written discharge plan and documentation that it was prepared and discussed with the resident, when appropriate, prior to the resident's discharge. The plan shall contain at least:
 - a. An assessment of the resident's continuing needs; and
 - b. A recommended plan for services in the resident's new environment.

§ 5.27. No later than 10 days after any discharge, except those from secure detention, the resident's record shall contain the following information:

- 1. Date of discharge;
- 2. Reason for discharge;
- 3. Documentation that the reason for discharge was discussed with the parent/ legal guardian/child-placing agency and, when appropriate, with the resident, except that this requirement does not apply to court ordered discharges;
- 4. Forwarding address of the resident, if known;
- 5. Name and address of legally responsible party to whom discharge was made; and
- 6. In cases of interstate placement documentation that the Administrator of the Interstate Compact on the

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Placement of Children was notified of the discharge.

§ 5.28. A comprehensive discharge summary shall be placed in the resident's record no later than 30 days after discharge except in a secure detention facility.

§ 5.29. A comprehensive discharge summary shall include:

1. Length of a resident's residence at the time of discharge;
2. The name of the resident's designated case coordinator, if assigned;
3. Information concerning new or currently prescribed medication including when and why it was prescribed, the dosage, and whether it is to be continued;
4. Summary of the resident's overall progress during placement;
5. Summary of family contacts during placement, if any; and
6. Reasons for discharge.

§ 5.30. Except in secure detention, residents shall be discharged only to the legally responsible party from whom they were accepted except (i) in cases where legal responsibility has been transferred to another person or agency during the period of the resident's stay in the facility or (ii) in cases where a resident committed pursuant to a court order is given a direct discharge by the agents of the appropriate State Board in accordance with law and policy.

Article 11.

Placement of Residents Outside the Facility.

§ 5.31. Except in a secure detention facility the facility shall not place a resident away from the facility, including in staff residences regardless of location, without first having obtained a Child Placing Agency license from the Department of Social Services. Temporary absences for the purposes of medical care, attendance at day school, or vacations shall not be deemed to be placements.

Article 12. Service Plan.

§ 5.32. A written individualized service plan, based on information derived from the documented study of the child and other assessments made by the facility, shall be developed for each resident, within 30 days of admission and placed in the resident's master file except that the requirements of this article do not apply (i) to secure detention facilities or (ii) to temporary care facilities.

Article 1. Authority to Accept Children.

§ 5.1. Children shall be accepted only by court order or by written placement agreement with legal guardians. This requirement shall not apply to temporary care facilities when a voluntary admission is made according to Virginia law.

Article 2. Admission Procedures.

§ 5.2. Each residential facility for children shall have written criteria for admission. Such criteria shall include:

1. A description of the population to be served;
2. A description of the types of services offered; and
3. Intake and admission procedures.

§ 5.3. The facility's criteria for admission shall be accessible to prospective residents, legal guardians, and placing agencies.

§ 5.4. The facility shall accept and maintain only those children whose needs are compatible with those services provided through the facility unless a child's admission is required by court order.

§ 5.5. If a facility is specifically approved to provide residential respite care, acceptance by the facility of a child as eligible for respite care is considered admission to the facility. Each individual period of respite care is not considered a separate admission.

Article 3. Interstate Compact on the Placement of Children.

§ 5.6. Documentation of the prior approval of the administrator of the Interstate Compact on the Placement of Children, Virginia Department of Social Services, shall be retained in the record of each resident admitted from outside the Commonwealth of Virginia.

§ 5.7. In cases of interstate placement, no later than 10 days after discharge the resident's record shall contain documentation that the Administrator of the Interstate Compact on the Placement of Children was notified of the discharge.

Article 4. Emergency and Voluntary Admissions.

§ 5.8. Facilities accepting emergency or voluntary admissions shall:

1. Have written policies and procedures governing such admissions;
2. Place in each resident's record the order of a court of competent jurisdiction, a written request for care or documentation of an oral request for care; and

3. Have written policies and procedures for obtaining a written placement agreement signed by the legal guardian.

§ 5.9. Facilities which accept emergency or voluntary admissions shall make and document prompt efforts to obtain a written placement agreement signed by the legal guardian.

Article 5. Application for Admission.

§ 5.10. Admission, other than an emergency or diagnostic admission, shall be based on an evaluation of an application for admission except that the requirements of this article shall not apply (i) to temporary care facilities, or (ii) to court ordered placements.

§ 5.11. Application for admission.

A. The facility shall develop an application for admission which is designed to compile information necessary to determine:

1. The physical needs of the prospective resident,
2. The educational needs of the prospective resident,
3. The emotional needs of the prospective resident,
4. The health needs of the prospective resident,
5. The protection needs of the prospective resident,
6. The suitability of the prospective resident's admission,
7. Whether the prospective resident's admission would pose any significant risk to the prospective resident or the facility's residents, and
8. Sufficient information to develop a service plan.

B. The facility's application for admission shall be reviewed and approved by the regulatory authority prior to initial use.

C. The application for admission, which follows the facility's approved format, shall be completed in its entirety prior to acceptance for care.

§ 5.12. In facilities required to base acceptance for care on an application for admission, each resident's record shall contain a completed application for admission at the time of a routine admission or within 30 days after an emergency admission.

Article 6. Preplacement Activities Documentation.

§ 5.13. At the time of admission except emergency or

voluntary admissions, involuntary admissions to security settings or admissions by court order the facility shall document:

1. A preplacement visit by the resident accompanied by a family member, agency representative or other responsible adult;
2. Preparation through sharing information with the resident, the family and the placing agency about the facility, the staff, the population served, activities and criteria for admission; and
3. Written confirmation of the admission decision to the legal guardian and to the placing agency.

Article 7. Written Placement Agreement.

§ 5.14. Written placement agreement.

A. The requirements of this article shall not apply to a facility which accepts admissions only upon receipt of the order of a court of competent jurisdiction. The record of each person admitted to such facility shall contain a copy of the court order.

B. The facility shall develop a written placement agreement which:

1. Authorizes the resident's placement,
2. Addresses acquisition of and consent for any medical treatment needed by the resident,
3. Addresses the rights and responsibilities of each party involved,
4. Addresses financial responsibility for the placement, and
5. Addresses resident absences from the facility.

C. The facility's placement agreement shall be reviewed and approved by the regulatory authority prior to initial use.

D. Each resident's record shall contain a completed placement agreement, which follows the facility's approved format, signed by the legal guardian or placing agency prior to a routine admission.

Article 8. Face Sheet.

§ 5.15. Face sheet.

A. The facility shall develop a face sheet which is designed to compile the identifying information necessary to enable the facility to provide routine and emergency care.

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B. The face sheet shall be reviewed and approved by the regulatory authority prior to initial use.

C. At the time of admission, each resident's record shall contain a completed face sheet which follows the facility's approved format.

D. Prompt efforts shall be made and documented to obtain any information which is missing or not available at the time of admission.

E. Information on the face sheet shall be corrected as changes occur.

Article 9. Service Plan.

§ 5.16. An individualized service plan shall be developed and placed in the file of each resident within 30 days of admission except that the requirements of this article do not apply to secure detention facilities.

§ 5.17. An individualized service plan shall be developed and placed in the file of each resident of a temporary care facility within 72 hours of admission.

§ 5.18. Service plan format.

A. The facility shall develop a format for individualized service plans which is designed to describe the:

- 1. Needs of the resident,*
- 2. Resident's current level of functioning,*
- 3. Goals established for the resident,*
- 4. Family's involvement, and*
- 5. Projected date for accomplishing each goal.*

B. The facility's format shall be reviewed and approved by the regulatory authority prior to initial use.

C. Each plan shall follow the facility's approved format.

§ 5.19. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan.

§ 5.20. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan, in reviewing the plan quarterly, and in revising the plan as necessary:

- 1. The resident;*
- 2. The resident's family, legal guardian, or legally authorized representative;*

3. The placing agency; and

4. Facility staff.

§ 5.21. A statement describing the participation, or lack thereof, of each party in developing the initial service plan, reviewing the plan each quarter, and revising the plan when necessary shall be included in the resident's record.

Article 10. Quarterly Progress Reports.

§ 5.22. For all facilities except secure detention facilities written progress reports shall be completed at least quarterly and shall be included in each resident's record.

§ 5.23. Quarterly progress report format.

A. The facility shall develop a format for quarterly progress reports which is designed to provide information on the:

- 1. Resident's progress toward the established goals,*
- 2. Family's involvement,*
- 3. Continuing needs of the resident,*
- 4. Progress towards discharge, and*
- 5. Status of discharge planning.*

B. The facility's format shall be reviewed and approved by the regulatory authority prior to initial use.

C. Each report shall follow the facility's approved format.

Article 11. Discharge.

§ 5.24. The facility shall have written criteria for termination of care that shall include:

- 1. Criteria for a resident's completion of the program which are consistent with facility's programs and services; and*
- 2. Conditions under which a resident may be discharged before completing the program.*

§ 5.25. If a facility is specifically approved to provide residential respite care a resident shall be discharged when the legal guardian(s) no longer intend to use the facility's services.

§ 5.26. Except when discharge is ordered by a court of competent jurisdiction, prior to the planned discharge date each resident's record shall contain the following:

1. Documentation that discharge has been planned and discussed with the parent, legal guardian, child placing agency, and resident; and

2. A written discharge plan which follows the facility's approved format.

§ 5.27. Information important to the resident's continuing care shall be made available or provided to the legal guardian or legally authorized representative, as appropriate.

§ 5.28. Residents shall be discharged only to the legal guardian or legally authorized representative.

§ 5.29. Discharge plan format.

A. The facility shall develop a format for discharge plans except this section shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. The record of each person discharged by such facility shall contain a copy of the court order.

B. The facility's format for discharge plans shall be reviewed and approved by the regulatory authority prior to initial use.

§ 5.30. Discharge sheet.

A. The facility shall develop a discharge sheet which contains information essential to responding to inquiries about the former resident.

B. The facility's discharge sheet shall be reviewed and approved by the regulatory authority prior to initial use.

C. A completed discharge sheet, which follows the facility's approved format, shall be placed in the resident's record within 10 days after discharge.

§ 5.31. Discharge summary format.

A. This section shall not apply to a facility which discharges only upon receipt of the order of a court of competent jurisdiction. The record of each resident discharged by such facility shall contain a copy of the court order.

B. The facility shall develop a format for comprehensive discharge summaries which is designed to outline the:

1. Services provided to the resident,
2. Resident's progress,
3. Resident's continuing needs, and
4. Reason(s) for discharge.

C. The facility's comprehensive discharge summary

format shall be reviewed and approved by the regulatory authority prior to initial use.

D. A comprehensive discharge summary, which follows the facility's approved format, shall be placed in the resident's record no later than 30 days after discharge.

Article 12.

Placement of Residents Outside the Facility.

§ 5.32. A resident shall not be placed outside the facility prior to the facility's obtaining a child placing agency license from the Department of Social Services except as permitted by statute or by order of a court of competent jurisdiction.

§ 5.33. The following parties shall participate, unless clearly inappropriate, in developing the initial individualized service plan: *Repealed.*

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.34. The degree of participation, or lack thereof, of each of the parties listed in § 5.33 in developing the service plan shall be documented in the resident's record. *Repealed.*

§ 5.35. The individualized service plan shall include, but not necessarily be limited to, the following: *Repealed.*

1. A statement of the resident's current level of functioning including strengths and weaknesses, and corresponding educational, residential and treatment/training needs;
2. A statement of goals and objectives meeting the above identified needs;
3. A statement of services to be rendered and frequency of services to accomplish the above goals and objectives;
4. A statement identifying the individual(s) or organization(s) that will provide the services specified in the statement of services;
5. A statement identifying the individual(s) delegated the responsibility for the overall coordination and integration of the services specified in the plan;
6. A statement of the timetable for the accomplishment of the resident's goals and objectives; and

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7. The estimated length of the resident's stay.

Article 13. Quarterly Progress Reports.

§ 5.36. For all facilities except secure detention facilities written progress summary reports completed at least every 90 days shall be included in each resident's record and shall include: *Repealed.*

1. Reports of significant incidents, both positive and negative;
2. Reports of visits with the family;
3. Changes in the resident's family situation;
4. Progress made toward the goals and objectives described in the Service Plan required by § 5.32;
5. School reports;
6. Behavioral problems in the facility and the community;
7. Summary of the resident's social, emotional, and physical development during the previous three months including a listing of any specialized services and on-going medications prescribed;
8. Reevaluation of the placement including tentative discharge plans.

Article 14. Annual Service Plan Review.

§ 5.37. For all facilities except secure detention facilities at least annually the following parties shall participate, unless clearly inappropriate, in formally reviewing and rewriting the service plan based on the resident's current level of functioning and needs: *Repealed.*

1. The resident;
2. The resident's family or legally authorized representative;
3. The placing agency; and
4. Facility staff.

§ 5.38. The degree of participation, or lack thereof, of each of the parties listed in § 5.37 in reviewing and rewriting the service plan shall be documented in the resident's record except that this section does not apply to secure detention facilities. *Repealed.*

§ 5.39. Staff responsible for the daily implementation of the resident's individual service plan shall be represented on the staff team that evaluates adjustment and progress and makes plans for individual residents except that this

section does not apply to secure detention facilities. *Repealed.*

§ 5.40. Staff responsible for daily implementation of the resident's individualized service plan shall be able to describe resident behavior in terms of the objectives in the service plan except that this section does not apply to secure detention facilities. *Repealed.*

Article 15. Service Plan for Temporary Care Facilities.

§ 5.41. An individualized service plan including the elements required by § 5.42 shall be developed for each resident admitted to a temporary care facility and placed in the resident's master file within 72 hours of admission. *Repealed.*

§ 5.42. The individualized service plan shall include: *Repealed.*

1. The resident's description of his situation/problem;
2. Documentation of contact with the resident's parent or legal guardian to obtain his description of the resident's situation/problem;
3. The facility staff's assessment of the resident's situation/problem;
4. A plan of action including:
 - a. Services to be provided;
 - b. Activities to be provided;
 - c. Who is to provide services and activities; and
 - d. When services and activities are to be provided;
5. The anticipated date of discharge; and
6. An assessment of the resident's continuing need for services.

Article 16. Counseling and Social Services.

§ 5.43. For all facilities except secure detention facilities the program of the facility shall be designed to provide counseling and social services which address needs in the following areas:

1. Helping the resident and the parents or legal guardian to understand the effects on the resident of separation from the family and the effect of group living;
2. Assisting the resident and the family in maintaining their relationships and planning for the future care of the resident;

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3. Utilizing appropriate community resources in providing services and maintaining contacts with such resources;

4. Helping the resident with problems affecting the ability to have satisfying personal relationships and use of the capacity for growth;

5. Conferring with the child care staff to help them understand the resident's needs in order to promote adjustment to group living; and

6. Working with the resident and with the family or any placing agency that may be involved in planning for the resident's future and in preparing the resident for return home, for independent living, or for other residential care.

§ 5.44. The provision of counseling and social services shall be documented in each resident's record except that this section does not apply to secure detention facilities.

§ 5.45. For all facilities, except secure detention facilities, counseling and other social services consistent with the goals of the Service Plan shall be provided to meet the specific needs of each resident in one of the following ways:

1. By a qualified staff member;
2. By service staff of the agency that placed the resident provided such staff is available on an as needed basis rather than on a limited basis (e.g., quarterly or semiannually);
3. On a contract basis by a professional child and family service worker licensed to practice in the Commonwealth of Virginia, other state(s) or the District of Columbia; or
4. On a contract basis by a professional child and family service worker who is working under the auspices of a public or private, nonprofit agency sponsored by a community based group.

Article 17. Residential Services.

§ 5.46. There shall be evidence of a structured program of care that is designed to:

1. Meet the resident's physical needs;
2. Provide protection, guidance and supervision;
3. Promote a sense of security and self-worth; and
4. Meet the objectives of any required service plan.

§ 5.47. There shall be evidence of a structured daily routine that is designed to assure the delivery of program

services.

§ 5.48. A daily activity log shall be maintained as a means of informing staff of significant happenings or problems experienced by residents including health and dental complaints or injuries.

§ 5.49. Entries in the daily activity log shall be signed or initialed by the person making the entry.

§ 5.50. Routines shall be planned to assure that each resident shall have the amount of sleep and rest appropriate for his age and physical condition.

§ 5.51. Staff shall provide daily monitoring and supervision, and instruction, as needed, to promote the personal hygiene of the residents.

Article 18. Health Care Procedures.

§ 5.52. Facilities shall have written procedures for the prompt provision of:

1. Medical and dental services for health problems identified at admission;
2. Routine ongoing and follow-up medical and dental services after admission; and
3. Emergency services for each resident as provided by statute or by agreement with the resident's legal guardian.

§ 5.53. For all facilities except temporary care facilities written information concerning each resident shall be readily accessible to staff who may have to respond to a medical or dental emergency:

1. Name, address, and telephone number of the physician and dentist to be notified;
2. Name, address, and telephone number of relative or other person to be notified;
3. Medical insurance company name and policy number or Medicaid number except that this requirement does not apply to secure detention facilities;
4. Information concerning:
 - a. Use of medication,
 - b. Medication allergies,
 - c. Any history of substance abuse except that this requirement does not apply to secure detention, and
 - d. significant medical problems; and

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5. Written permission for emergency medical or dental care or a procedure and contacts for obtaining consent for emergency medical or dental care except that this section does not apply to secure detention facilities.

§ 5.54. Facilities specifically approved to provide respite care shall update the information required by § 5.53 at the time of each individual stay at the facility.

Article 19. Physical Examinations.

§ 5.55. Each child accepted for care shall have a physical examination by or under the direction of a licensed physician no earlier than 90 days prior to admission to the facility, except that (i) the report of an examination within the preceding 12 months shall be acceptable if a child transfers from one residential facility licensed or certified by a state agency to another, (ii) a physical examination shall be conducted within 30 days after admission if a child is admitted on an emergency basis and a report of physical examination is not available, and (iii) this section does not apply if a child is admitted to a secure detention facility or to a temporary care facility.

§ 5.56. Following the initial examination, each resident shall have a physical examination annually except that this section does not apply to (i) security detention facilities, or (ii) temporary care facilities.

§ 5.57. In all facilities except (i) secure detention facilities, and (ii) temporary care facilities additional or follow-up examination and treatment shall be required when:

1. Prescribed by the examining physician; or
2. Symptoms indicate the need for an examination or treatment by a physician.

§ 5.58. Each physical examination report shall be included in the resident's record.

§ 5.59. For all facilities except (i) secure detention facilities and (ii) temporary care facilities each physical examination report shall include:

1. Immunizations administered;
2. Visual acuity;
3. Auditory acuity;
4. General physical condition, including documentation of apparent freedom from communicable disease including tuberculosis;
5. Allergies, chronic conditions, and handicaps, if any;
6. Nutritional requirements, including special diets, if any;

7. Restriction of physical activities, if any;

8. Recommendations for further treatment, immunizations, and other examinations indicated;

9. The date of the physical examination; and

10. The signature of a licensed physician, the physician's designee, or an official of a local health department.

§ 5.60. In all facilities except (i) secure detention facilities and (ii) temporary care facilities a child with a communicable disease, whose best interests would not be served by prohibiting admission, may be admitted only after a licensed physician certifies that:

1. The facility is capable of providing care to the child without jeopardizing residents and staff; and
2. The facility is aware of the required treatment for the child and procedures to protect residents and staff.

§ 5.61. Recommendations for follow-up medical observation and treatment shall be carried out at the recommended intervals except that this section does not apply to (i) secure detention facilities or (ii) temporary care facilities.

§ 5.62. Except for (i) secure detention facilities, (ii) temporary care facilities, and (iii) respite care facilities, each facility shall provide written evidence of:

1. Annual examinations by a licensed dentist; and
2. Follow-up dental care as recommended by the dentist or as indicated by the needs of each resident.

§ 5.63. Each resident's record shall include notations of health and dental complaints and injuries showing symptoms and treatment given.

§ 5.64. Each resident's record shall include a current record of ongoing psychiatric or other mental health treatment and reports, if applicable.

§ 5.65. Provision shall be made for suitable isolation of any resident suspected of having a communicable disease.

§ 5.66. A well stocked first-aid kit shall be maintained and readily accessible for minor injuries and medical emergencies.

Article 20. Medication.

§ 5.67. All medication shall be securely locked and properly labeled.

§ 5.68. Medication shall be delivered only by staff authorized by the director to do so.

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§ 5.69. Staff authorized to deliver medication shall be informed of any known side effects of the medication and the symptoms of the effect.

§ 5.70. A program of medication shall be instituted for a specific resident only when prescribed in writing by a licensed physician.

§ 5.71. Medications that are classified as "controlled substances" as defined in § 54.1-3401 of the Code of Virginia shall only be obtained from a licensed physician or from a licensed pharmacist upon individual prescription of a licensed physician.

§ 5.72. A daily log shall be maintained of all medicines received by the individual resident.

§ 5.73. The attending physician shall be notified immediately of drug reactions or medication errors.

§ 5.74. The telephone number of a Regional Poison Control Center shall be posted on or next to at least one nonpay telephone in each building in which children sleep or participate in programs.

§ 5.75. At least one 30cc bottle of syrup of Ipecac shall be available on the premises of the facility for use at the direction of the Poison Control Center or physician.

Article 21. Nutrition.

§ 5.76. Provisions shall be made for each resident to have three nutritionally balanced meals daily.

§ 5.77. Menus shall be planned at least one week in advance.

§ 5.78. Any deviation(s) from the menu shall be noted.

§ 5.79. The menus including any deviations shall be kept on file for at least six months.

§ 5.80. The daily diet for residents shall be based on the generally accepted "Four Food Groups" system of nutrition planning. (The Virginia Polytechnic Institute and State University Extension Service is available for consultation.)

§ 5.81. The quantity of food served shall be adequate for the ages of the residents.

§ 5.82. Special diets shall be provided when prescribed by a physician.

§ 5.83. The established religious dietary practices of the resident shall be observed.

§ 5.84. Staff who eat in the presence of the residents shall be served the same meals.

§ 5.85. There shall be no more than 15 hours between the

evening meal and breakfast the following day.

Article 22. Management of Resident Behavior.

§ 5.86. The facility shall have written policies and procedures governing management of resident behavior. Rules of conduct, if any, shall be included in the written policies and procedures.

§ 5.87. The facility shall have written procedures for documenting and monitoring management of resident behavior.

§ 5.88. Written information concerning management of resident behavior shall be provided to prospective residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information; legal guardian(s); and referral agencies prior to admission except that for court ordered or emergency admissions this information shall be provided:

1. To residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, within 12 hours following admission,
2. To referral agencies within 72 hours following the resident's admission, and
3. To legal guardians within 72 hours following the resident's admission except that this requirement shall not apply:
 - a. To secure detention facilities;
 - b. When a facility is providing temporary care of 30 days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and
 - c. When a state mental hospital is evaluating a child's treatment needs as provided by § 16.1-275 of the Code of Virginia.

§ 5.89. When substantive revisions are made to policies governing management of resident behavior, written information concerning the revisions shall be provided to:

1. Residents, except those with diagnosed mental disabilities resulting in the loss of the cognitive ability to understand the information, and referral agencies, and
2. Legal guardians except that this requirement shall not apply:
 - a. To secure detention facilities;
 - b. When a facility is providing temporary care of 30

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days or less while conducting a diagnostic evaluation to identify the most appropriate long-term placement for a child who has been committed to the Board of Youth and Family Services; and

c. When a state mental hospital is evaluating a child's treatment needs as provided in § 16.1-275 of the Code of Virginia.

§ 5.90. Only trained staff members may manage resident behavior.

Article 23. Confinement.

§ 5.91. When a resident is confined, the room shall not be locked nor the door secured in any manner that prevents the resident from opening it, except that this section does not apply to secure custody facilities such as learning centers and secure detention facilities.

§ 5.92. Any resident confined shall be able to communicate with staff.

§ 5.93. There shall be a staff check on the room at least every 30 minutes.

§ 5.94. The use of confinement shall be documented when confinement is used as a technique for managing resident behavior.

Article 24. Prohibitions.

§ 5.95. The following actions are prohibited:

1. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

2. Limitation on contacts and visits with attorney, probation officer, regulatory personnel or placing agency representative;

3. Bans on contacts and visits with family or legal guardian(s) except as permitted by other applicable state regulations or by order of a court of competent jurisdiction;

4. Delay or withholding of incoming or outgoing mail except as permitted by other applicable state and federal regulations or by order of a court of competent jurisdiction;

5. Any action which is humiliating, degrading, or abusive;

6. Corporal punishment;

7. Subjection to unsanitary living conditions;

8. Deprivation of opportunities for bathing or access to toilet facilities except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

9. Deprivation of health care including counseling;

10. Deprivation of appropriate services and treatment;

11. Application of aversive stimuli except as permitted as part of an intrusive aversive therapy plan approved pursuant to other applicable state regulations;

12. Administration of laxatives, enemas, or emetics except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record;

13. Deprivation of opportunities for sleep or rest except as ordered by a licensed physician for a legitimate medical purpose and documented in the resident's record; and

14. Limitation on contacts and visits with advocates employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to implement § 37.1-84.1 of the Code of Virginia and advocates employed by the Department for Rights of Virginians With Disabilities to implement §§ 51.5-36 through 51.5-39 of the Code of Virginia, PL 99-319 § 201.42 USC 10841, and PL 98-527, 42 USC § 6000 et seq.

Article 25. Chemical or Mechanical Restraints.

§ 5.96. The use of mechanical restraints is prohibited except as permitted by other applicable state regulations or as ordered by a court of competent jurisdiction.

§ 5.97. The use of chemical restraints is prohibited.

Article 26. Physical Restraint.

§ 5.98. Only after less intrusive interventions have failed or when failure to restrain a resident would result in harm to the resident or others, trained staff members may physically restrain a resident.

§ 5.99. The use of physical restraint shall be only that which is minimally necessary to protect the resident or others.

§ 5.100. The facility shall have written policies and procedures governing the use of physical restraint.

§ 5.101. The facility's procedures shall include methods to be followed should physical restraint, less intrusive

interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

§ 5.102. Each application of physical restraint shall be fully documented in the resident's record including:

1. Date;
2. Time;
3. Staff involved;
4. Circumstances;
5. Reason(s) for use of physical restraint;
6. Duration;
7. Method(s) of physical restraint used; and
8. Less intrusive interventions which were unsuccessfully attempted prior to using physical restraint.

§ 5.103. Each staff member responsible for supervision of children shall receive basic orientation to the facility's physical restraint procedures and techniques and to less intrusive interventions:

1. Within seven days of employment, and
2. Prior to assuming sole responsibility for the supervision of one or more residents.

Article 27. Seclusion.

§ 5.104. Seclusion is allowed only as permitted by other applicable state regulations.

Article 28. Timeout.

§ 5.105. Timeout is allowed only as permitted by other applicable state regulations.

§ 5.106. Repealed.

§ 5.107. Repealed.

Article 29. Education.

§ 5.108. Each resident of compulsory school attendance age shall be enrolled in an appropriate educational program as provided in the Code of Virginia.

§ 5.109. The facility shall provide educational guidance and counseling for each resident in selection of courses and shall ensure that education is an integral part of the

resident's total program.

§ 5.110. Facilities operating educational programs for handicapped children shall operate those programs in compliance with applicable state and federal regulations.

§ 5.111. When a handicapped child has been placed in a residential facility without the knowledge of school division personnel in the resident's home locality, the facility shall contact the superintendent of public schools in that locality in order to effect compliance with applicable state and federal requirements relative to the education of handicapped children.

§ 5.112. When a facility has an academic or vocational program that is not certified or approved by the Department of Education, teachers in the program shall provide evidence that they meet the qualifications that are required in order to teach those specific subjects in the public schools.

Article 30. Religion.

§ 5.113. The facility shall have written policies regarding the opportunities for the residents to participate in religious activities.

§ 5.114. The facility's policies on religious participation shall be available to the resident and any individual or agency considering the placement of a child in the facility.

§ 5.115. Residents shall not be coerced to participate in religious activities.

Article 31. Recreation.

§ 5.116. There shall be a written description of the recreation program for the facility showing activities which are consistent with the facility's total program and with the ages, developmental levels, interests, and needs of the residents and which includes:

1. Opportunities for individual and group activities;
2. Free time for residents to pursue personal interests which shall be in addition to a formal recreation program;
3. Except in secure detention facilities, use of available community recreational resources and facilities;
4. Scheduling of activities so that they do not conflict with meals, religious services, educational programs or other regular events; and
5. Regularly scheduled indoor and outdoor recreational activities that are specifically structured to develop skills and attitudes (e.g., cooperation, acceptance of

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losing, etc.).

§ 5.117. The recreational program provided indoors, outdoors (both on and off the premises), and on field trips shall be directed and supervised by adults who are knowledgeable in the safeguards required for the specific activities.

§ 5.118. Opportunities shall be provided for coeducational activities appropriate to the ages and developmental levels of the residents.

Article 32. Community Relationships.

§ 5.119. Opportunities shall be provided for the residents in a group living situation to participate in activities and to utilize resources in the community except that this section does not apply to secure detention facilities.

§ 5.120. Community interest in residents and efforts on their behalf (public parties, entertainment, invitations to visit families) shall be carefully evaluated to ascertain that these are in the best interest of the residents.

Article 33. Clothing.

§ 5.121. Provisions shall be made for each resident to have his own adequate supply of clean, comfortable, well-fitting clothes and shoes for indoor and outdoor wear.

§ 5.122. Clothes and shoes shall be similar in style to those generally worn by children of the same age in the community who are engaged in similar activities.

§ 5.123. Residents shall have the opportunity to participate in the selection of their clothing except that this section does not apply to secure detention facilities.

§ 5.124. Each resident's clothing shall be inventoried and reviewed at regular intervals to assure repair or replacement as needed.

§ 5.125. The resident shall be allowed to take personal clothing when the resident leaves the facility.

Article 34. Allowances and Spending Money.

§ 5.126. The facility shall provide opportunities appropriate to the ages and developmental levels of the residents for learning the value and use of money through earning, budgeting, spending, giving and saving except that this section does not apply to secure detention facilities.

§ 5.127. There shall be a written policy regarding allowances except that this section does not apply to secure detention facilities.

§ 5.128. The written policy regarding allowances shall be

made available to legal guardians at the time of admission except that this section does not apply to secure detention facilities.

§ 5.129. The facility shall provide for safekeeping and for record keeping of any money that belongs to residents.

Article 35. Work and Employment.

§ 5.130. Any assignment of chores, which are paid or unpaid work assignments, shall be in accordance with the age, health, ability, and service plan of the resident.

§ 5.131. Chores shall not interfere with regular school programs, study periods, meals or sleep.

§ 5.132. Work assignments or employment outside the facility including reasonable rates of payment shall be approved by the program director with the knowledge and consent of the legal guardian except that this section does not apply to secure detention facilities.

§ 5.133. The facility shall ensure that any resident employed inside or outside the facility is paid at least at the minimum wage required by the applicable law concerning wages and hours and that such employment complies with all applicable laws governing labor and employment except that this section does not apply to secure detention facilities.

§ 5.134. Any money earned through employment of a resident shall accrue to the sole benefit of that resident.

Article 36. Visitation at the Facility and to the Resident's Home.

§ 5.135. The facility shall provide written visitation policies and procedures permitting reasonable visiting privileges and flexible visiting hours.

§ 5.136. Copies of the written visitation policies and procedures shall be made available to the parents, legal guardians, the resident, and other interested persons important to the resident no later than the time of admission except that when parents or legal guardians do not participate in the admission process, visitation policies and procedures shall be mailed to them within 12 hours after admission.

Article 37. Use of Vehicles and Power Equipment.

§ 5.137. Any transportation provided for or used by children shall be in compliance with state, federal or international laws relating to:

1. Vehicle safety and maintenance;
2. Licensure of vehicles; and

3. Licensure of drivers.

§ 5.138. There shall be written safety rules for transportation of children, including handicapped children, appropriate to the population served.

§ 5.139. There shall be written safety rules for the use and maintenance of vehicles and power equipment.

Article 38. Reports to Court.

§ 5.140. When the facility has received legal custody of a child pursuant to §§ 16.1-279 A or 16.1-279 B of the Code of Virginia copies of any foster care plans (required by §§ 16.1-281 and 16.1-282 of the Code of Virginia) submitted to the court shall be filed in the resident's record except that this section does not apply to secure detention facilities.

Article 39. Emergency Reports.

§ 5.141. Any serious incident, accident or injury to the resident ; any overnight absence from the facility without permission; any runaway; and any other unexplained absence shall be reported to the parent/legal guardian/placing agency within 24 hours.

§ 5.142. The resident's record shall contain:

1. The date and time the incident occurred;
2. A brief description of the incident;
3. The action taken as a result of the incident;
4. The name of the person who completed the report;
5. The name of the person who made the report to the parent/legal guardian or placing agency; and
6. The name of the person to whom the report was made.

Article 40. Suspected Child Abuse or Neglect.

§ 5.143. Any case of suspected child abuse or neglect shall be reported immediately to the local department of public welfare/social services as required by § 63.1-248.3 of the Code of Virginia.

§ 5.144. The resident's record shall include:

1. Date and time the suspected abuse or neglect occurred;
2. Description of the incident;
3. Action taken as a result of the incident; and

4. Name of the person to whom the report was made at the local department.

PART VI. DISASTER OR EMERGENCY PLANS.

Article 1. Procedures for Meeting Emergencies.

§ 6.1. Established written procedures shall be made known to all staff and residents, as appropriate for health and safety, for use in meeting specific emergencies including:

1. Severe weather;
2. Loss of utilities;
3. Missing persons;
4. Severe injury; and
5. Emergency evacuation including alternate housing.

Article 2. Written Fire Plan.

§ 6.2. Each facility with the consultation and approval of the appropriate local fire authority shall develop a written plan to be implemented in case of a fire at the facility.

§ 6.3. Each fire plan shall address the responsibilities of staff and residents with respect to:

1. Sounding of fire alarms;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, evacuation of children with special needs, and checking to ensure complete evacuation of the building(s);
3. A system for alerting fire fighting authorities;
4. Use, maintenance and operation of fire fighting and fire warning equipment;
5. Fire containment procedures including closing of fire doors, fire windows or other fire barriers;
6. Posting of floor plans showing primary and secondary means of egress; and
7. Other special procedures developed with the local fire authority.

§ 6.4. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations determined by the appropriate local fire authority.

§ 6.5. The written fire plan shall be reviewed with the local fire authority at least annually and updated, if

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necessary.

§ 6.6. The procedures and responsibilities reflected in the written fire plan shall be made known to all staff and residents.

Article 3. Posting of Fire Emergency Phone Number.

§ 6.7. The telephone number of the fire department to be called in case of fire shall be prominently posted on or next to each telephone in each building in which children sleep or participate in programs.

Article 4. Portable Fire Extinguishers.

§ 6.8. Portable fire extinguishers shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, on each floor there shall be installed and maintained at least one approved type ABC portable fire extinguisher having at least a 2A rating.

§ 6.9. Fire extinguishers shall be mounted on a wall or a post where they are clearly visible and so that the top is not more than five feet from the floor except that if a fire extinguisher weighs more than 140 pounds, it shall be installed so that the top is not more than 2-1/2 feet from the floor. They shall be easy to reach and remove and they shall not be tied down, locked in a cabinet, or placed in a closet or on the floor, except that where extinguishers are subject to malicious use, locked cabinets may be used provided they include a means of emergency access.

§ 6.10. All required fire extinguishers shall be maintained in operable condition at all times.

§ 6.11. Each fire extinguisher shall be checked by properly oriented facility staff at least once each month to ensure that the extinguisher is available and appears to be in operable condition. A record of these checks shall be maintained for at least two years and shall include the date and initials of the person making the inspection.

§ 6.12. Each fire extinguisher shall be professionally maintained at least once each year. Each fire extinguisher shall have a tag or label securely attached which indicates the month and year the maintenance check was last performed and which identifies the company performing the service.

Article 5. Smoke Alarms.

§ 6.13. Smoke detectors or smoke detection systems shall be installed and maintained in the facility in accordance with state and local fire/building code requirements. In those buildings where no such code requirements apply, the facility shall provide at least one approved and

properly installed smoke detector:

1. In each bedroom hallway;
2. At the top of each interior stairway;
3. In each area designated for smoking;
4. In or immediately adjacent to each room with a furnace or other heat source; and
5. In each additional location directed by the local building official, the local fire authority, or the state fire authority.

§ 6.14. Each smoke detector shall be maintained in operable condition at all times.

§ 6.15. If the facility is provided with single station smoke detectors each smoke detector shall be tested by properly oriented facility staff at least once each month and if it is not functioning, it shall be restored immediately to proper working order. A record of these tests shall be maintained for at least two years and shall include the date and initials of the person making the test.

§ 6.16. If the facility is provided with an automatic fire alarm system, the system shall be inspected by a qualified professional firm at least annually. A record of these inspections shall be maintained for at least two years and shall include the date and the name of the firm making the inspection.

Article 6. Fire Drills.

§ 6.17. At least one fire drill (the simulation of fire safety procedures included in the written fire plan) shall be conducted each month in each building at the facility occupied by residents.

§ 6.18. Fire drills shall include, as a minimum:

1. Sounding of fire alarms;
2. Practice in building evacuation procedures;
3. Practice in alerting fire fighting authorities;
4. Simulated use of fire fighting equipment;
5. Practice in fire containment procedures; and
6. Practice of other simulated fire safety procedures as may be required by the facility's written fire plan.

§ 6.19. During any three consecutive calendar months, at least one fire drill shall be conducted during each shift.

§ 6.20. False alarms shall not be counted as fire drills.

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§ 6.21. The facility shall designate at least one staff member to be responsible for conducting and documenting fire drills.

§ 6.22. A record shall be maintained on each fire drill conducted and shall include the following information:

1. Building in which the drill was conducted;
2. Date of drill;
3. Time of drill;
4. Amount of time to evacuate building;
5. Specific problems encountered;
6. Staff tasks completed:
 - a. Doors and windows closed,
 - b. Head count,
 - c. Practice in notifying fire authority, and
 - d. Other;
7. Summary; and
8. Signature of staff member responsible for conducting and documenting the drill.

§ 6.23. The record for each fire drill shall be retained for two years subsequent to the drill.

§ 6.24. The facility shall designate a staff member to be responsible for the fire drill program at the facility who shall:

1. Ensure that fire drills are conducted at the times and intervals required by these standards and the facility's written fire plan;
2. Review fire drill reports to identify problems in the conduct of fire drills and in the implementation of the requirements of the written fire plan;
3. Consult with the local fire authority, as needed, and plan, implement and document training or other actions taken to remedy any problems found in the implementation of the procedures required by the written fire plan; and
4. Consult and cooperate with the local fire authority to plan and implement an educational program for facility staff and residents on topics in fire prevention and fire safety.

Article 7.

Staff Training in Fire Procedures.

§ 6.25. Each new staff member shall be trained in fire procedures and fire drill procedures within seven days after employment.

§ 6.26. Each new staff member shall be trained in fire procedures and fire drill procedures prior to assuming sole responsibility for the supervision of one or more children.

Article 8.

"Sighted Guide" Training for Emergency Use.

§ 6.27. When a blind or visually impaired child is admitted the facility shall obtain the services of an orientation and mobility specialist from the Department of Visually Handicapped to provide "sighted guide" training for use in emergencies except that this requirement shall not apply to secure detention facilities.

§ 6.28. "Sighted guide" training for use in emergencies shall be required of all personnel having responsibility for supervision of a blind or visually handicapped child except that this requirement shall not apply to secure detention facilities.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: State Plan for Medical Assistance Relating to Hospital Reporting Requirements. VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care.

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

Public Hearing Date: N/A – Written comments may be submitted until 5 p.m. on July 16, 1993.

(See Calendar of Events section for additional information)

Summary:

The proposed amendments require providers to submit additional financial, statistical and structural information for the submission of completed cost reports, and enable DMAS to make its annual findings and assurances. The regulations will impose a penalty for the failure to submit cost reports and the supplemental information within the required time frames.

The section of the State Plan for Medical Assistance affected by this action is Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (Attachment 4.19 A).

The current regulation requires that the provider submit the completed cost report forms, the provider's trial balance, and its financial statements including the balance sheet, income statement, statement of retained earnings, and a statement of changes in

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financial position together with footnotes to the financial statement. The regulation also requires the submission of a home office cost report, where applicable, and the submission of schedules reconciling the financial statements and trial balance to the costs claimed in the cost report. The existing regulation provides that cost reports will not be considered complete by DMAS until all of the required information is received. Also, there is no penalty provision for the late submission of cost reports.

The proposed regulation requires the submission of two classes of information: (i) information that must be received within 90 days after the close of the provider's fiscal year (this information must be received before the filing of the cost report will be deemed complete); and (ii) financial, statistical and structural information that must be received by DMAS within 120 days after the close of the provider's fiscal year.

In addition to what was required by the existing regulation, the proposed regulation requires that all providers submit audited financial statements and detailed schedules of the restricted cash funds, investments and notes and mortgages payable, and a schematic diagram of the business and control structure of the parent company, the provider and all related entities. Providers that are members of a chain organization must also file the following information under the proposed regulation: audited consolidated financial statements, and detailed information regarding the members of the boards of directors or trustees of all entities shown on the schematic diagram. This additional information will permit DMAS to expand its review of the hospital's cost reports and the overhead cost of an efficient and economical hospital operation. Previously, the financial statements were not required to be audited statements. The Auditor of Public Accounts has recommended that audited financial statements be obtained to ensure the accuracy of the financial information contained in the cost report.

Within 120 days after the end of the provider's fiscal year, additional financial, statistical and structural information is required to be filed. None of the information contained in § VI(B) of this proposed regulation, is required by the existing regulation. This additional information must be supplied by all providers except Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) providers. Hospitals administered by DMHMRSAS are to be exempted from this additional information requirement. These hospitals are retroactively reimbursed, as contrasted with all the other prospectively reimbursed hospitals, and are already constrained by the upper payment limits established for the Title XVIII Medicare program.

Section VI(C) of the proposed regulation imposes a

penalty for the failure to submit the required information in a timely manner. This provision is being added as the result of a recent audit recommendation from the Health Care Financing Administration (HCFA).

All of the required information should be accumulated by providers engaged in proper financial management.

Title 42, §§ 447.250 through 447.272 of the Code of Federal Regulations requires DMAS to make a series of annual findings and assurances with respect to the state plan. Findings and assurances are also required with respect to all proposed amendments to the State Plan when changes in payment methods and standards are made. While the current findings and assurances process has not been found to be inadequate and while current regulations do not define the findings process, recent court decisions have defined the procedural requirements that a state must take in order for its findings and assurances to be adequate. DMAS has adopted a structured approach for the development and production of the findings and assurances, as described in these cases. Receipt of the information submitted pursuant to this regulatory change is necessary in order for DMAS to complete its analysis of hospital costs necessary for preparation of its structured findings and assurances.

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates—Inpatient Hospital Care.

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in paragraphs I and II above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban—0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed

cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia (DRI-V), as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points (200 basis points) (DRI-V+2), to the then current allowance for inflation. The escalation factor shall be applied in accordance with the current inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

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The new method shall still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator.

(4) Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (Sec. 400), shall be considered as pass throughs and not part of the calculation.

(5) An incentive plan shall be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive shall be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference		Sliding Scale Incentive	
		% of Ceiling	% of Ceiling	% of Difference	% of Difference
\$230	\$230	0	0	0	0
\$230	207	23.00	10%	2.30	10%
\$230	172	57.50	25%	14.38	25%
\$230	143	76.00	33%	19.00	25%

(6) There shall be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the

hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

2. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

(8) Outlier adjustments.

a. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

b. DMAS shall pay to disproportionate share hospitals (as defined in V (7) above) an outlier adjustment in payment amount for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

c. The outlier adjustment calculation.

(1) Each eligible hospital which desires to be

considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(2) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. Any hospital which qualifies for the extensive neonatal care provision (as governed by V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in (8) a or b above.

(3) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (8) c (2) above.

(4) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

d. Pursuant to § 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with the EPSDT program referred to in 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws,

regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

VI. The Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. The Commonwealth uses the Medicare principles of cost reimbursement as contained in the Provider Reimbursement Manual ("PRM-15"), except where otherwise noted in this plan, to establish rates and determine allowable costs for Virginia's prospective payment system. Allowable costs are determined from a uniform cost report filed by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end.

A. Effective for cost reports with fiscal years ending on or after September 30, 1993, the cost report will be judged complete for the purpose of cost settlement when DMAS has all of the following:

1. Cost report form or forms, financial statements and

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related material to be filed by all providers:

a. Completed cost reporting form or forms provided by DMAS, with signed certification or certifications;

b. The provider's trial balance showing adjusted journal entries;

c. A paper copy of the HCFA 2552 form that is filed with the Medicare intermediary;

d. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, and footnotes to the financial statements and the management report. Hospitals that are part of a chain must also file the additional information enumerated in subdivision 2 of this subsection;

e. State, county or city-owned and operated providers must file financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of cash flows, footnotes to the financial statements, and, if applicable, the Auditor of Public Accounts' audit report.

f. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

g. Schedule of investments by type (stock, bond, etc.), amount, and current market value;

h. Schedule of notes and mortgages payable identifying the amounts and due dates;

i. Schedules which reconcile the financial statements and trial balances to the expenses claimed in the cost report;

j. Schematic diagram detailing the business and control structure of the parent, the provider and all related entities; and

k. Such other analytical information and supporting documentation required for the determination of allowable costs, or such other information as may be required or necessitated by federal or state law, provided such information or documentation is requested by DMAS in writing from the provider.

2. Additional cost report or reports, financial statements and related material to be filed by all hospitals that are part of a chain organization:

a. Home office cost report;

b. Audited consolidated financial statements of the chain organization including the footnotes to the

financial statements, the management report, and consolidating financial schedules;

c. The hospital's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;

d. Names, addresses and compensations of all members of the boards of directors or trustees of all entities shown on the schematic diagram described in subdivision 1 j of this subsection.

B. In order for the DMAS to make the findings and assurances required by Title 42, §§ 447.250 through 447.272 of the Code of Federal Regulations, which implement § 1902(a)(13)(A) of the Social Security Act, the following additional information must be filed within 120 days after the provider's fiscal year end for all cost reporting periods ending on or after September 30, 1993. The Department of Mental Health, Mental Retardation and Substance Abuse Services providers shall not be subject to the additional filing requirements of this section.

1. Annual Rate Review Reports filed with the Virginia Health Services Cost Review Council, to include (i) Commercial Diversification Survey, (ii) Financial Annual Summary (Historical Data), and (iii) Historical Submission Forms for Outpatient Surgical Hospitals;

2. The number of discharges by Medicare Diagnosis Related Grouping (DRG) and payor class for all patients except newborns;

3. The number of discharges by Champus DRG and payor class for newborn patients;

4. The number of inpatient days by DRG and payor class;

5. Joint Commission on Accreditation of Hospitals (JCAH) reports;

6. Management or consultant reports completed by the parent, the hospital or an outside consultant firm;

7. Virginia Department of Health Certificate of Need summary;

8. Virginia Department of Health Annual Licensure and Survey;

9. Identification of Full Time Equivalent (FTE) personnel (one FTE is equal to 2,080 hours) by cost center and job classification; and

10. A copy of the most recent federal information return (FORM 990) together with all accompanying schedules that are required to be made available to

the public by the Internal Revenue Service for any provider, controlling entity or affiliate that is exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code.

C. When the information required by subsections A and B of this section is not received in a timely manner, the following actions shall be taken:

1. All interim payments since the beginning of the current cost reporting period shall be deemed overpayments.

2. The provider's interim rate shall be reduced by 20% for each month that the information is late. After the delinquent information is received, the cost report is desk audited, and a new prospective rate is established, the amounts withheld shall be computed and paid subject to a 10% penalty of the withheld amounts for information received more than 180 days after the fiscal year end.

D. The Commonwealth utilizes the cost apportionment and cost finding methods of the Medicare Program but does not adopt the prospective payment system of the Medicare Program enacted October 1, 1983.

VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to subsection A or B above of this section.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance

with subsection A and B above of this section.

VIII. Refund of overpayments.

A. Lump sum payment.

When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services ("the director") may approve a repayment schedule of up to 36 months.

A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

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D. Extension request documentation.

In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

E. Interest charge on extended repayment.

Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal factfinding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined

using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

X. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable inpatient cost-to-charge ratio, updated annually, for enrolled hospitals less five percent. The five percent is for the cost of the additional manual processing of the claims. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of XII.A.

C. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. Prior approval must be received from the DMAS Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

E. Nothing in this regulation is intended to preclude DMAS from reimbursing for special services, such as rehabilitation, ventilator, and transplantation, on an exception basis and reimbursing for these services on an individually, negotiated rate basis.

XIII. Payment Adjustment Fund.

A. A Payment Adjustment Fund shall be created in each of the Commonwealth's fiscal years during the period July 1, 1992, to June 30, 1996. The Payment Adjustment Fund shall consist of the Commonwealth's cumulative addition of \$5 million in general funds and its corresponding federal financial participation for reimbursement to nonstate-owned hospitals in each of the Commonwealth's fiscal years during this period. Each July 1, or as soon thereafter as is reasonably possible, the Commonwealth shall, through a single payment to each nonstate-owned hospital, equitably and fully disburse the Payment Adjustment Fund for that year.

B. In the absence of any amendment to the State Plan, Attachment 4.19A, for the Commonwealth's fiscal year after 1996, the Payment Adjustment Fund shall be continued at the level established in 1996 and shall be disbursed in accordance with the methodology described below.

C. The Payment Adjustment Funds shall be disbursed in accordance with the following methodology:

1. Identify each nonstate-owned hospital provider (acute, neonatal and rehabilitation) receiving payment based upon its peer group operating ceiling in May of each year.
2. For each such hospital identified in subdivision 1, identify its Medicaid paid days for the 12 months ending each May 31.

3. Multiply each such hospital's days under subdivision 2 by such hospital's May individual peer group ceiling (i.e., disregarding such hospital's actual fiscal year end ceiling) as adjusted by its then current disproportionate share factor.

4. Sum all hospital amounts determined in subdivision 3.

5. For each such hospital, divide its amount determined in subdivision 3 by the total of such amounts determined in subdivision 4. This then becomes the hospital adjustment factor ("HAF") for each such hospital.

6. Multiply each such hospital's HAF times the amount of the Payment Adjustment Fund ("PAF") to determine its potential PAF share.

7. Determine the unreimbursed Medicaid allowable operating cost per day for each such hospital in subdivision 1 for the most recent fiscal year on file at DMAS as of May 31, inflate such costs by DRI-V+2 from the midpoint of such cost report to May 31 and multiply such inflated costs per day by the days identified for that hospital in subdivision 2, creating the "unreimbursed amount."

8. Compare each such hospital's potential PAF share to its unreimbursed amount.

9. Allocate to all hospitals, where the potential PAF share exceeds the unreimbursed amount, such hospital's unreimbursed amount as its actual PAF share.

10. If the PAF is not exhausted, for those hospitals with an unreimbursed amount balance, recalculate a new HAF for each such hospital by dividing the hospital's HAF by the total of the HAFs for all hospitals with an unreimbursed amount balance.

11. Recompute each hospital's new potential share of the undisbursed PAF by multiplying such funds by each hospital's new HAF.

12. Compare each hospital's new potential PAF share to its unreimbursed amount. If the unreimbursed amounts exceed the PAF shares at all hospitals, each hospital's new PAF share becomes its actual PAF share. If some hospitals' unreimbursed amounts are less than the new potential PAF shares, allocate to such hospitals their unreimbursed amount as their actual PAF share. Then, for those hospitals with an unreimbursed amount balance, repeat steps 10, 11 and 12 until each hospital's actual PAF share is determined and the PAF is exhausted.

13. The annual payment to be made to each nonstate-owned hospital from the PAF shall be equal to their actual PAF share as determined and allocated

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above. Each hospital's actual PAF share payment shall be made on July 1, or as soon thereafter as is reasonably feasible.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

EDITOR'S NOTE: The following Department of Social Services regulations, VR 615-25-01 and VR 615-25-01:1, are being proposed for an additional 60 days of public comment. The original 60-day public comment period on these regulations occurred from December 30, 1991, through February 28, 1992. The additional changes from the original proposal are shown in brackets so that revisions are apparent.

Title of Regulation: VR 615-25-01. Minimum Standards for Licensed Family Day Care Homes (REPEALING).

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

Public Hearing Date: N/A – Written comments may be submitted until July 17, 1993.

(See Calendar of Events section for additional information)

Summary:

This regulation is being repealed concurrent with the promulgation of newly proposed Minimum Standards for Licensed Family Day Homes. Amendments to the Code of Virginia require the promulgation of regulations for the licensure of family day homes to be effective November 1, 1993. Maintaining the current regulations would conflict with the 1993 statutory mandate. It would also leave many children without the health and safety protections the revised standards offer them.

* * * * *

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:

May 27, 1993 - 5 p.m.

June 1 1993 - 5 p.m.

June 2, 1993 - 5 p.m.

June 3, 1993 - 5 p.m.

Written comments may be submitted until July 17, 1993.

(See Calendar of Events section for additional information)

Summary:

The proposed regulation, is developed to show major additions and revisions in the licensing standards

caused by changes to the Code of Virginia relating to family day homes and deemed necessary to update licensing requirements which have not been significantly revised since 1979. The 1993 General Assembly amended the Code of Virginia to change the name and definition of a family day care home to that of a family day home and to require the licensure of a family day home.

The licensing statute mandates that from July 1, 1993, until July 1, 1996, the licensure threshold shall be increased to nine children received for care and establishes a licensure capacity of no more than 12 children, exclusive of the provider's own children and children residing in the home. Effective July 1, 1996, the licensure threshold reverts to six children received for care and a licensure capacity is maintained of no more than 12 children, exclusive of the provider's own children and children residing in the home.

The proposed regulation has multiple topic areas which positively impact the overall care, protection, and health of children in a licensed family day home. The areas addressed are listed below:

1. Definitions
2. Legal base
3. Qualifications for family day providers and assistants
4. Ratios of adults to children
5. Household
6. Physical environment
7. Fire and shock prevention and emergency procedures
8. Small appliances and kitchen equipment
9. Space and equipment for children
10. Program and services
11. Supervision
12. Diapering, toileting, and waste disposal
13. Transportation
14. Behavior and guidance
15. Nutrition and food services
16. Health requirements for family day household members and caregivers
17. Health requirements for children
18. Illness, injury and death
19. Medication and first aid supplies
20. Animals
21. Record keeping responsibilities

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

PART I. GENERAL.

Article 1. Definitions.

§ 1.1. Definitions.

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

["Accessible means capable of being entered, reached, or used.]

"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" "Care giver"] means the provider, substitute provider or assistant.

"Child" means any individual under 18 years of age. [Effective July 1, 1993, "child" means an individual under 13 years of age for purposes of child day programs.]

["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.

"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.]

["Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.]

["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 of age or older] and helps the [group] family day [care] home provider in the care, protection, supervision and guidance of children in [a private the] home.

["Group] "Family day [care] home provider" [(s)] or "provider" [(s)] means a person [at least who is] 18 years of age [or older and who] is issued the [group] family day [care] home license by the Department of

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Social Services and has primary responsibility in providing care, protection, supervision and guidance for children in [a ~~private~~ the] family home.

["~~Group~~] "Family day [~~care~~] home standards" means the Minimum Standards for Licensed [~~Group~~] Family Day [~~Care~~] Homes or family day [~~care~~] homes subject to licensure.

["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 dependability, and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months.]

"Licensee" means the person [or persons] 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 [or older who meets the qualifications for family day providers, is] designated by the [~~group~~] family day [~~care~~] home provider and approved by the department [~~who~~ , and who] is readily available to provide [substitute] child care in the [family day] 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~~ certain] family day [~~care~~ home homes] . A [~~group~~] family day [~~care~~] home [which is subject to licensure] shall be licensed before it begins to provide day care and the license shall be posted in a conspicuous place at the licensed premises [as cited in § 63.1-196 C of the Code of Virginia] . A [~~licensed group~~] family day [~~care~~] home is [~~one where no fewer than six and no more than 12 children~~ required to be licensed when nine through 12 children, exclusive of the provider's own children and any children who reside in the home, are provided care at any one time. Effective July 1, 1996,

a family day home is subject to licensure when six through 12 children, exclusive of the provider's own children and any children who reside in the home,] are provided care at any one time.

§ 1.2. When 13 or more children [, exclusive of the provider's own children and children who reside in the home,] are receiving care at any one time in a [~~private~~ family day] home that is subject to licensure, Child [~~Care~~ Day] Center Standards shall apply.

§ 1.3.[~~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 than 12 children in private family homes.~~ family day homes required to be licensed as cited in § 63.1-195 of the Code of Virginia.]

PART II. PERSONNEL.

Article 1.

[~~Qualification Requirements~~ Qualifications] for [~~Group~~] Family Day [~~Home~~] Providers and Assistants.

§ 2.1. Care givers shall be able to read, [~~write,~~] understand and carry out responsibilities and requirements [~~from~~ of] 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~~ the varying capabilities, interests, needs and problems of children in care and the] ability to relate to children with courtesy, respect, patience, and affection, and an understanding and respect for the [~~child's family~~ families of children in care] ;

2. The ability to [~~communicate effectively~~ speak and write in English as necessary to meet the requirements of this regulation] ;

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

4. The ability to [understand instructions on prescription and nonprescription medicines,] handle emergencies with dependability and [~~good~~ sound] judgment [,] and communicate effectively with emergency personnel.

§ 2.3. Care givers shall be responsible, wholesome, [~~emotionally stable,~~] of good character and reputation [,] and display behavior that demonstrates emotional stability and maturity] .

§ 2.4. No person convicted of a crime involving child

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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 American Heart Association; or]

[~~2. 3.~~] The National Safety Council [; ~~or~~ for First Aid Training Institute.]

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

[Exception: A provider who is a RN or LPN with a current license from the Board of Nursing shall not be required to obtain first aid certification.]

§ 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; physical, intellectual, social and emotional] child development, [behavior management and] discipline [techniques] , health and safety [in the family day home environment] , art and music activities [for children] , nutrition, child abuse detection and prevention, and recognition [and prevention of the spread] of communicable diseases.

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

Article 2. Ratio of Adults to Children.

§ 2.8. The licensee shall ensure that the [~~home total~~ number of children receiving care at any one time does] not exceed the [~~total licensed capacity of children receiving care at any one time maximum licensed capacity of the home.~~ Note: The licensed capacity shall never exceed 12 children, exclusive of the provider's own children and children who reside in the home] .

§ 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.

A. In determining the need for an assistant, the following fixed adult-to-child ratios shall be maintained for children receiving care. This ratio includes the provider's own and resident children under eight years of age:

1. 1:4 children under two years of age;

2. 1:8 children two years to four years of age;

3. 1:16 children four years to 10 years of age; and

4. Children over 10 years of age shall not count in determining the ratio of adults to children for staffing purposes.

B. When children are in mixed age groups, the provider shall apply the following point system in determining the need for an assistant. Each adult care giver shall not exceed 16 points. The provider's own and resident children under eight years of age count in point maximums:

1. Children under two years of age count as four points each;

2. Children two years to four years of age count as two points each;

3. Children four years to 10 years of age count as one point each; and

4. Children over 10 years of age count as zero points.

Exception: The point maximums for mixed age groups or the fixed adult-to-child ratios may be exceeded in one age group by no more than one child for up to one month during transitional periods when there is turnover in children receiving care and when the ages of children leaving and entering care do not match.]

§ 2.10. The [~~group~~] family day [~~care~~] home shall comply with any limitations which may be placed by the

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[*Virginia Public Building Safety Uniform Statewide Building*] 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 [14 years of age and older] including relatives, lodgers, [*care givers*] and employees, shall be responsible, wholesome, [*and emotionally stable persons*] of good character and reputation [, and display behavior that demonstrates emotional stability] .

§ 3.2. All [*adult*] 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 check* conducted no more than 90 days before the date of initial application] .

§ 3.3. All members of the [*group*] family day [*care*] household 14 years [*old of age*] and older including relatives, lodgers, care givers [,] and employees shall have a Child Protective Services Central Registry [*check* clearance conducted no more than 90 days before the date of initial application] .

§ 3.4. [*Smoking shall not be permitted inside the home* The licensee shall ensure that a smoke-free environment is provided in rooms accessible to children] 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 [*kept*] clean and [*shall not present*] safeguarded from open and obvious] hazards to the health and safety of children [, such as loose carpeting, lead paints, choking hazards, sharp objects, plastic bags, and poisonous plants accessible to children] .

§ 4.2. [*The home* All rooms used by children] shall be [*properly*] ventilated, [*dry and*] heated in [*the*] winter [, and cooled in the summer to maintain adequate air exchange and required temperatures] .

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

B. [*Winter temperatures* During winter months, a draft-free temperature] of [*at least 68°F 65°F to 75°F*] at no more than two feet above floor level] shall be maintained in all rooms used by children. [*During* summer months, if the temperature in rooms used by children exceeds 80°F, a cooling device shall be used.]

§ 4.3. All rooms [, halls, and stairways] used [*for* by children in] care shall be well lighted.

§ 4.4. Firearms [; *ammunition and other similar hazardous materials and objects*] shall be stored [*safely* in areas inaccessible to children and unloaded and apart from ammunition] in a locked [*space* cabinet or drawer] with keys out of reach of children.

§ 4.5. Protective barriers including but not limited to safety gates shall be [*placed on* installed securely at the top or bottom of open] stairways [*that on the floor where the stairways*] are accessible to children [*under* two years of age] . 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 meet the current Consumer Product Safety Commission federal standards for juvenile products] .

§ 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 banisters*] with vertical posts between the [*handrail handrails*] 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. When stairways have banisters with vertical posts between the handrails and each step and the distance between the vertical posts is greater than 3 1/2 inches, these stairways shall be accessible to children only when supervised by a care giver.]

[§ 4.7. § 4.8.] Clear glass doors [*that reach within 18 inches of the floor*] shall be clearly marked [*at with* colorful decals near] the child's level to prevent accidents.

[§ 4.8. § 4.9.] The home shall be kept free from rodents and insect infestation.

[§ 4.9. § 4.10. There shall be bathing and toilet facilities A bathroom shall be] easily accessible to [*the*] children [*two years of age and older* The bathroom shall be kept clean and have working toilets and sinks, tissue, and soap.] 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. § 4.11.] 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

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and accessible to the children. Protective coverings shall be large enough to prevent swallowing.]

§ 4.12. Cleaning agents [~~and plastic bags~~ , disinfectants and deodorizers, plant-care chemicals, pesticides, and other poisonous materials or supplies] shall be stored in areas inaccessible to children or in a [~~locked area with keys out of reach of children~~ cabinet or drawer with child-resistant locks] .

§ 4.13. [~~The~~ Unless water is obtained from a municipal supply and the house is connected to a municipal sewer line, the] water supply and septic system [of the family home] shall be [inspected and] 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; or a private laboratory if there are open and obvious symptoms of water or sewage system problems, such as evidence of cloudy, murky, or muddy water, or sewage back up.~~]

Article 2.

Fire [and Shock] Prevention and Emergency Procedures.

[§ 4.14. Electrical outlet safety plugs shall be placed in all outlets that are accessible to children. These outlets shall be covered with protective or child-resistant receptacle covers or spring-loaded offset cover plates. Protective coverings and outlet plugs shall be larger than 1/4 inches in diameter.

§ 4.15. No electrical device accessible to children shall be placed so that it could be plugged into an electrical outlet while in contact with a water source, such as a sink, tub, shower area, toilet, or swimming or wading pool.]

[~~§ 4.14.~~ § 4.16. ~~Frayed cords and~~ Electrical cords that are frayed and have] exposed wires shall not be used. Electrical cords shall not be [overloaded or] placed under carpets or stapled down to [~~keep~~ be kept] 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.~~ § 4.17.] All flammable and combustible materials, including [~~but not limited to~~] matches, lighters, [~~cleaning agents, lighter fluid, petroleum distillates, such as kerosene, turpentine and automotive products,~~] 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; in a cabinet or drawer with child-resistant locks.~~]

[~~§ 4.17.~~ § 4.18.] All alternate heating devices [~~(oil and wood burning stoves)~~ such as oil stoves, wood burning stoves, and fireplaces,] and associated chimneys [, and

ventilating devices] shall be inspected annually [by a heating and air conditioning contractor to verify the devices are properly installed, maintained] and cleaned as needed. [Documentation of the completed inspection and cleaning shall be maintained by the licensee.]

[~~§ 4.18.~~ § 4.19.] Radiators, oil and wood burning stoves, floor furnaces [, portable electric space heaters, fireplaces] and similar [~~hazards~~ heating devices used in areas accessible to children] shall have barriers or screens [~~to prevent children from being burned; and be located at least three feet from combustible materials.~~]

[~~§ 4.19.~~ § 4.20.] Portable liquid fuel burning [~~heating appliances and open fire places~~ heaters] shall not be used [in areas accessible to children] when children are in care.

[~~§ 4.20.~~ § 4.21.] An operable [type AB, BC, or, multipurpose,] 2A10BC rated fire extinguisher shall be [~~provided kept~~] near the kitchen area [, out of the reach of children, away from the stove, and near an exit. Instructions for use of the extinguisher shall be posted on it or be easily accessible] .

[~~§ 4.21.~~ § 4.22.] An operable smoke detector [~~(s) recommended by a nationally recognized laboratory~~ , with a UL approved or equivalent mark,] shall be placed on each [level floor] of the home. [Battery operated detectors shall have the batteries tested at least monthly and replaced at least annually.]

[~~§ 4.22.~~ § 4.23.] There shall be [a] written posted [~~procedures related to emergency escape plan in the event of a~~] fire [~~and severe weather or natural disaster~~] which shall be taught to [~~and all care givers and to children in care who are developmentally able to understand. The escape plan shall be~~] practiced with [all care givers and] children in care on a monthly basis [to the point of exit from the home] .

[~~§ 4.23.~~ § 4.24.] Documentation [shall be maintained] of practiced [~~procedures~~ emergency escape plans, which] shall include date of [the] 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.~~ § 4.25.] 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 [been given] the unlisted number [in writing] . 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.~~ § 4.26.] 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.~~ § 4.27.] An operable flashlight and battery operated radio shall be kept in a designated area and available at all times.

[§ 4.28.] If there are fire hazards, the local fire prevention officials may be contacted by the department's representative. The provider shall comply with the requirements or recommendations made by the fire prevention officials to eliminate fire hazards.]

Article 3.

Small Appliances and Kitchen Equipment.

[~~§ 4.27.~~ § 4.29. ~~Small~~ All small] electrical appliances, such as, but not limited to, curling irons, toasters [, blenders, can openers,] and irons [,] shall be placed in an area inaccessible to children [or in a cabinet or drawer with child-resistant latches, unless used by children under close supervision, e.g., when children are using these appliances in planned activities] .

[~~§ 4.28.~~ § 4.30.] Sharp kitchen utensils shall [~~not be accessible to or used by children in care.~~ be placed in an area inaccessible to children or in a cabinet or drawer with child-resistant latches, unless used by children under close supervision, e.g., when children are using these objects in planned activities.]

[~~§ 4.29.~~ § 4.31.] Electrical fans [~~in use~~ used in rooms accessible to children] shall [have protective shields and] be placed [~~in areas inaccessible to children.~~ out of the reach of children.]

Article 4.

Space and Equipment for Children.

[~~§ 4.30.~~ § 4.32.] The home shall provide each child with [adequate] space [~~for to allow~~] free movement and active play [~~without overcrowding~~] indoors or outdoors.

[~~§ 4.31.~~ § 4.33.] Each child two years of age and older shall have access to [an] individual [~~space~~ location] in which to keep clothing, toys, and belongings together. Children under the age of two shall have an individual [~~space~~ location] that is accessible to the care giver and parent.

[~~§ 4.32.~~ § 4.34.] Each child shall be provided with a

designated crib, cot, [rest mat,] or bed for resting or napping. [~~School age children may use a rest mat.~~ Rest mats that are used shall have comfortable cushioning and be sanitized between each use.]

A. Clean linen suitable to the season [, and assigned for individual use,] 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 [, except for crib and playpen sheets which shall be washed daily] .

[~~§ 4.33.~~ § 4.35.] Cribs [or playpens that meet the current Consumer Product Safety Commission standards for 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.~~ under 18 months of age.]

[~~A. 1.~~] Double decker cribs [~~and playpens~~] shall not be used [~~for sleeping.~~ ;]

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

[~~C. 3.~~] 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.] Mattresses shall fit snugly next to the crib so that no more than two fingers can be inserted between mattresses and the crib; and

5. Cribs with end panel cut-outs shall be of a size that prevents head entrapment.]

[~~§ 4.34.~~ § 4.36.] High chairs [~~shall be tip proof and~~ infant carrier seats shall meet the American Society for Testing Materials (ASTM) standards for juvenile products] and when occupied by a child a safety strap shall be used [and securely fastened] .

[§ 4.37.] Infant walkers shall not be used.]

[~~§ 4.35.~~ § 4.38.] Any swimming and wading pools shall be set up and maintained according to manufacturer instructions. [~~When not in use,~~ swimming Outdoor swimming pools shall be enclosed by safety fences and gates with child-resistant locks] and wading pools shall be [~~covered~~ emptied and stored away when not in use during the normal family day home hours of operation] .

[§ 4.39.] No home shall maintain any receptacle or pool, whether natural or artificial, containing water in such condition that insects breeding therein may become a menace to the public health.]

PART V.

CARE OF CHILDREN.

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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~~ Opportunities for one] or more regularly scheduled rest or nap periods [. Children unable to sleep shall be provided time and space for quiet play] ;

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 [: ; and]

[6. Opportunities for structured and unstructured play time and provider-directed and child-initiated learning activities.]

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

[§ 5.5. Children in care shall not be shaken or bounced vigorously at any time.]

[~~§ 5.5.~~ § 5.6.] 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~~ closely] .

Article 2. Supervision.

[§ 5.7. Children shall be supervised at all times. Children shall not be left alone in the home in the care of an assistant under 18 years of age.]

[~~§ 5.6.~~ § 5.8.] Care givers shall promptly respond to infants' needs for food and comfort.

[§ 5.9. Children using infant carrier seats or high chairs shall be carefully supervised during meals.]

[~~§ 5.7.~~ § 5.10.] Play spaces for infants shall offer a diversity of experiences for the infant and provide frequent opportunities to creep, crawl, toddle and walk. [The designated sleeping space for infants shall be used infrequently as a play space if it is used at any time for this purpose.]

[~~§ 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.~~ § 5.11.] 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.~~ § 5.12.] 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.

[~~§ 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.~~ § 5.13.] Children shall be supervised in a manner which ensures that the care giver 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~~ Ages] 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.~~ § 5.14.] When children are permitted to swim and wade, the care giver shall be present at all times and able to respond immediately to emergencies. [A minimum of two care givers shall be present to supervise the children when three or more children are in the water.]

Article 3. Diapering [~~and~~ ,] Toileting [, and Waste Disposal]

[~~§ 5.14.~~ § 5.15.] When a child's clothing or diaper becomes wet or soiled, it shall be changed [~~immediately~~ promptly] .

[~~§ 5.15.~~ § 5.16.] The following steps shall be used for

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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 [moist] disposable wipe during each diapering.

[3. Soiled disposable diapers and wipes shall be discarded in a lined container, with a tightly fitting lid, operated by a foot pedal. Soiled cloth diapers shall be put in a plastic bag and stored in a diaper bag to be taken home. The container and diaper bag shall be kept clean, free of soil build-up and odor, and shall not be accessible to children.]

[~~3. 4.~~ 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. 5.~~ The diaper changing surface shall be cleaned with soap and water [and ,] disinfected [by spraying] with a [germicidal or] water and chlorine bleach solution [, i.e., one tablespoon of bleach to one quart of water, and allowed to air dry] after each use. [When a bleach and water solution is used, it shall be made fresh daily and stored out of the reach of children.]

[~~5. 6.~~ Surfaces used for children's activities or meals shall not be used for changing diapers.

[~~§ 5-16. § 5.17.~~ Toilet chairs shall be emptied promptly [, rinsed] and disinfected after each use.

[~~§ 5-17. § 5.18.~~ Children's hands shall be washed with soap and water after toileting.

[~~§ 5-18. § 5.19.~~ Children [five years of age and older] shall be permitted privacy when toileting.

[~~§ 5.20.~~ Garbage and rubbish shall be removed from rooms occupied by children on a daily basis and removed from the premises at least twice weekly. There shall be a sufficient number of waste and diaper containers to hold all of the waste that accumulates between periods of removal.

§ 5.21. Children shall not be allowed access to refuse storage areas. Such areas shall be free of litter, odor, and uncontained waste.]

Article 4. Transportation.

[~~§ 5-19. § 5.22.~~ Whenever the provider or assistant transports enrolled children they shall:

1. [Have a valid driver's license; Ensure that any

vehicle used to transport children meets the standards set by the Code of Virginia and is equipped with the proper child restraining devices required by law to correspond with the ages of the children being transported;]

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;~~

3. Have a copy of the parents' written authorization to transport the children;]

[~~5. 4.~~ Have the name, address and phone number of the family day [care] home [and additional emergency contact numbers in the car when transporting children; in the vehicle used for transportation; and]

[~~6. 5.~~ Have [the child's a copy of the children's] emergency [authorization; and contact and medical information in their possession.]

[~~7. Use safety belts and child restraints according to Virginia state statutes.~~]

Article 5. Behavior and Guidance.

[~~§ 5-20. § 5.23.~~ The provider shall discuss with each child's parent [or parents] the rules and limits used to encourage desired behavior and discourage undesired behavior of children in care.

[~~§ 5-21. § 5.24.~~ 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 [of development] ;

2. Providing children with reasons for limits;

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 der shall not give a child authority to punish another child nor shall provider consent to 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.

§ 5.25. The following behavior shall be prohibited as methods of discipline by all care givers;

1. Corporal punishment, including hitting, spanking, beating, shaking, pinching, and other measures that produce physical pain;
2. Forcing, withdrawing, or threatening to force or withdraw food, rest, or bathroom opportunities;
3. Abusive or profane language;
4. Any form of public or private humiliation, including threats of physical punishment; and
5. Any form of emotional abuse, including rejecting, terrorizing, ignoring, or corrupting a child.]

[§ 5.24. Children shall not be punished for toileting accidents.

§ 5.26. Children shall not be physically restrained except as necessary to ensure their own safety or that of others, and then only for as long as is necessary for control of the situation.]

[§ 5.24. § 5.27.] 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. § 5.28.] 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. § 5.29.] 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.

[§ 5.30. Children shall not be punished for toileting accidents.]

Article 4. Nutrition and Food Services.

[§ 5.27. A variety of foods § 5.31 Foods] served to children for breakfast, lunch [,] and supper shall consist of [a variety of] items selected from [each of] the following [~~four~~ food] groups:

1. Meat [/ or] meat alternates

2. Fruits and vegetables

3. Bread [/ or] bread alternates [, e.g., pasta, rice, noodles,] and cereal

4. Milk [unless a child is allergic to milk or milk products]

Note: Providers shall supplement meals from homes that do not meet this standard [or inform parents who provide meals from home that meals served to children must consist of a variety of foods from each of the four food groups] .

[§ 5.28. § 5.32.] Snacks served to children shall include [~~items~~ a variety of foods] from two or more [~~different~~] food groups. [A variety of food items shall be served for snacks.]

[§ 5.29. § 5.33.] To assist in preventing choking, food [that is hard, round, small, thick and sticky, and smooth and slippery] such as [~~but not limited to~~] uncut hot dogs, nuts, seeds, raisins, uncut grapes, uncut raw carrot, [peanuts, chunks of peanut butter, hard candy,] and popcorn shall not be served to children [~~three years of age and younger~~ under four years of age, unless it is prepared before being served in a manner that will reduce the risk of choking, i.e., hot dogs cut lengthwise, raisins and grapes cut in small pieces, carrots cooked or cut lengthwise.]

[§ 5.30. § 5.34.] Leftover food shall be discarded from individual plates following a meal or snack.

[§ 5.31. § 5.35.] Children shall be served small size portions and permitted to have additional servings.

[§ 5.32. § 5.36.] Water shall be available for drinking and shall be offered on a regular basis for all children in care.

[§ 5.33. § 5.37.] Special dietary foods shall be provided as directed by a physician for individual children or in accordance with religious requirements.

[§ 5.34. § 5.38.] 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.~~ a.m.] and 6 [~~P.M.~~ p.m.] , breakfast, lunch, and snacks shall be served.

2. Between the hours of 2 [~~P.M.~~ p.m.] and 10 [~~P.M.~~ p.m.] , afternoon snack, supper and a bed time snack shall be served.

3. Between the hours of 8 [~~P.M.~~ p.m.] and 8 [~~A.M.~~ a.m.] a bed time snack and breakfast shall be served.

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

[§ 5-37. § 5.40.] *Children's hands shall be washed with soap and water before eating meals or snacks.*

[§ 5-38. § 5.41.] *Care givers hands shall be washed with soap or germicidal cleansing agent and water before handling or serving food. [Care givers shall use sanitary practices when handling and preparing foods.]*

[§ 5-39. § 5.42.] *Infants shall be fed on demand unless parents provide other written instructions. [Infants who cannot hold their own bottles shall be picked up and held when fed. Bottles shall not be propped.]*

[§ 5-40. § 5.43.] *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.*

§ 5.44. *If infant formula is heated in a microwave oven, precautions shall be taken to prevent scalding. Only refrigerated formula shall be heated. When formula is heated in the bottles, the bottles shall be upright and uncovered. Heating time shall be no more than 30 seconds for four ounce bottles and no more than 45 seconds for eight ounce bottles. After heating and replacing nipples, bottles shall be turned up and down 10 times and the temperature tested by dropping milk on the top of the hand. The temperature of the milk shall be cool on the hand.]*

[§ 5-42. *Infants who cannot hold their own bottles shall be picked up and held when fed. Bottles shall not be propped.*]

[§ 5-43. § 5.45.] *Children shall not be allowed to eat [and or] drink while walking [or , running, playing,] lying down [, or riding in vehicles] .*

[§ 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 [and chipped or cracked dishes shall not be used] .

§ 5.47. *Eating utensils and dishes shall be properly cleaned by [~~scrapping,~~] prerinsing, washing and air drying [or using a dishwasher. Eating utensils and dishes shall be stored in a clean dry place, and protected from contamination] .*

[§ 5-48. *Eating utensils and dishes shall be stored in a clean, dry place and protected from contamination.*]

[§ 5-49. § 5.48.] *If [disposables disposable eating utensils and dishes] 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. § 5.49. *An operable thermometer shall be placed in all refrigerator and freezer compartments.] Temperatures shall be maintained at or below [45°F 40°F] in refrigerator compartments and at or below 0° in the freezer compartments.*

[§ 5-52. § 5.50.] *All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.*

[§ 5-53. § 5.51.] *All milk and milk products shall be pasteurized. Powdered milk [may shall] 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 givers and any other adult household members who come in contact with children or [handles handle] food served to children, as described below:*

1. *Initial tuberculosis examination and report.*

a. *Within [30 90] days prior to licensure, employment or contact with children, each individual shall obtain [an evaluation a tuberculin skin test] 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,*

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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 [maintained at the family day home] .

[Exception: An individual may delay obtaining the tuberculosis test if a statement from a physician is provided that indicates the test is not advisable for specific health reasons. This statement shall include an estimated date for when the test can be safely administered. The individual shall obtain the test no later than 30 days after this date.]

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~~ individual's record maintained at the family day home] .

[(4) Screening beyond two years is not required unless there is known contact with a case of tuberculosis or development of chronic respiratory symptoms. Following the two-year period during which chest x-rays are required annually, additional screening shall be obtained every two years.

b. Additional screening is not required for an individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.]

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 [this section] .

§ 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:

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

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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~~ provider] 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~~ Oral body temperature] of [~~100°F~~ 101°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 designated~~] area [within sight and sound of the care giver] until leaving the home.

§ 6.8. When a child in care has been exposed [or is suspected to have been exposed] to a reportable communicable disease, the parent shall be informed [on

the same day contact occurs or is suspected] .

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

§ 6.10. [~~Each~~ An] 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 to the department within 24 hours~~] 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.

[§ 6.12. The provider shall report a lost or missing child when it was necessary to seek assistance from local emergency or police personnel to the department within 24 hours.

§ 6.13. The provider shall verbally notify the local department of social services or call the toll free number for the Bureau of Child Protective Services (1-800-552-7096/TDD) immediately whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.]

Article 4. [~~Medicines.~~ Medication and First Aid.]

[§ 6.12. § 6.14. Nonprescription drugs, including but not limited to vitamins and aspirin. Prescription and nonprescription drugs] may only be given to a child [with a if it is recommended by a health care provider for a specific child and the provider has the] 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. § 6.15.] 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

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medicines shall be [dated and kept] in original container with the prescription label attached.

[§ 6.16. Any over-the-counter medication brought into the home for use by a specific child shall be labeled with the following information: the date; the child's first and last names; specific, legible instructions for administration and storage, i.e., manufacturer's instructions; and the name of the health care provider who made the recommendation.

§ 6.17. All medications, refrigerated or unrefrigerated, shall have child protective caps, shall be kept in an orderly fashion, and shall be stored at the proper temperature. Medication shall not be used beyond the date of expiration.

§ 6.18. The provider shall keep a medication record on each child which shall include:

1. A prescription by a health care provider, if required;
2. The amount and type of medication administered to the child;
3. The day and time the medication was administered to the child; and
4. The name of provider or adult assistant administering the medication. (Assistants under the age of 18 shall not administer medication.)]

[§ 6.14. § 6.19.] 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. [Sterile nonstick] gauze pads;
4. Adhesive [or bandage] tape;
5. Band-aids, assorted [sizes] ;
6. [~~An~~ Sealed packages of alcohol wipes or an] antiseptic cleaning agent;
7. An antibacterial ointment;
8. Thermometer;
9. Chemical [ice cold] pack, if ice [pack] not available;
10. First aid instructional manual; and
11. Insect bite or sting preparation.

[12. Triangular bandages;

13. Syrup of Ipecac, to be used only when instructed by the regional poison control center or child's physician;

14. Flexible roller or stretch gauze;

15. Disposable nonporous gloves; and

16. Eye dressing or pad.]

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.

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

§ 6.21. Any pet or animal present at the home, indoors or outdoors, shall be in good health, and show no evidence of carrying any disease.

§ 6.22. Dogs or cats, where allowed, shall be immunized for any diseases that can be transmitted to humans and shall be maintained on a flea, tick and worm control program.

§ 6.23. Care givers shall always be present when children are exposed to animals in the home. Children shall be instructed on safe procedures to follow when in close proximity to these animals, e.g., not to provoke or startle them or remove their food. Potentially dangerous animals shall not be in contact with children.

§ 6.24. Animal litter boxes shall not be located in areas accessible to children. All animal litter must be removed promptly from children's areas and disposed of properly.

§ 6.25. Care givers' and children's hands shall be washed after handling animals or animal wastes.]

PART VII. RECORD KEEPING RESPONSIBILITY.

[§ 7.1. The provider's records shall be open for inspection by authorized representatives of the department.]

[§ 7.1. § 7.2. Each group The] family day [care] home shall maintain [records a record] for each [enrolled] child. [Records of withdrawn children shall be kept on file for one year after the withdrawal date.]

[§ 7.2. § 7.3.] Each child's [records record] shall include:

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1. [~~The following~~] identifying information:

a. [~~Child's~~ The child's full] name, nickname (if any), address and birthdate;

b. [~~Parent's~~ The] name [~~(s)~~], address [~~(es)~~] and telephone number [~~(s)~~ of each parent] ;

c. [~~Parent(s)~~ The name, address, and telephone number of each parent's] place of employment [; and] work hours [~~and work telephone number~~] ;

d. [~~child's physician's name and telephone number~~] [The name, address, and telephone number of the child's physician] ;

e. [~~Name~~ The name] , address and telephone number of one or more designated person [or persons] to contact in case of an emergency if the parent cannot be reached;

f. [~~Names~~ The 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 [requested and] maintained when a parent requests that the provider not release the child [~~(ren)~~] to the other parent; and

g. [~~Date~~ The date] of admission and withdrawal [; when appropriate;]

[h. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;

i. The name of the parent's hospitalization plan and number or medical assistance plan and number, if applicable;

j. Results of the health examination and up-to-date immunization records of the child or a record of medical or religious exemption from these requirements; and

k. A record of any accidents or injuries sustained by the child that required first aid or medical attention.]

2. [~~Medical information required by 6.4 and 6.5.~~ The parent's signed authorization to use a substitute provider and the name, address, and telephone number of the provider.]

3. Completed [~~agreement forms~~ written agreements]

a. Written agreements shall be made between the provider and the parent [or parents] for each child in care. [~~One~~ A signed] copy shall be maintained with the record and one copy shall be given to the parent [or parents] .

b. [~~Agreement forms~~ Agreements] shall cover:

(1) Hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; [schedule of daily routine;] 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~~ the] 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~~ the child to participate] in specific classes, clubs, field trips [, including trips outside of the immediate community,] 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~~ a designated] person to transport [~~a~~ the] child other than the provider; [~~and~~]

(6) Written [~~individual~~] authorization [~~for trips outside of the immediate community when taken-~~ for a designated person to transport the child in emergency situations;]

[(7) Type of television programs which parents consider acceptable for children to view;

(8) A statement acknowledging that the parent has been informed of whether the provider does or does not carry liability insurance; and

(9) A statement acknowledging that there shall be an open-door policy which permits parents to visit, observe, and pick up their children at any time.]

[~~§ 7.3.~~ § 7.4.] The provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent [or parents] 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~~] .

[§ 7.5. The emergency contact information listed in subdivision 1 e of § 7.3 shall be made available to a physician, hospital, or emergency care unit in the event of a child's illness or injury.

§ 7.6. Whenever the provider leaves the home with the children, the provider shall have copies of the emergency contact and medical information listed in subdivisions 1 e

and 1 h through 1 k of § 7.3.

§ 7.7. *The provider shall maintain records of inspection visits, corrective action plans, and any legal actions.*

§ 7.8. *Training records of the care giver and any assistants shall be maintained in the family day home.*

§ 7.9. *The provider shall agree to share information daily with parents about their children's health, development, behavior, adjustment, or needs.]*

[*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 (SARE) 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:		B. Number of Children Currently Receiving Day Care in Your Home: Age Range From: 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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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 Owned by: <input type="checkbox"/> Private		E. Is there a septic tank? <input type="checkbox"/> Yes <input type="checkbox"/> No

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. INFORMATION ABOUT THE HOME

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?

Yes No

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.

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.

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.

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STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-01. Permit Regulation. (REPEALING)

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 15, 1993 - 2 p.m.

June 21, 1993 - 3 p.m.

June 22, 1993 - 3 p.m.

June 23, 1993 - 1:30 p.m.

June 23, 1993 - 7:30 p.m.

June 30, 1993 - 2 p.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(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 is proposing to repeal the Permit Regulation (VR 680-14-01). This regulation delineates the authority and general procedures to be followed in connection with issuing Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits. This action is being proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a VPDES Permit Regulation (VR 680-14-01:1) and a VPA Permit Regulation (VR 680-14-21) which will incorporate the intent and purpose of the Permit Regulation.

REGISTRAR'S NOTICE: Due to its length, the proposed regulation entitled "VR 680-14-01:1. VPDES Permit Program Regulation" 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 is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, 910 Capitol Square, Room 262, Richmond, Virginia, and at the State Water Control Board, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

Title of Regulation: VR 680-14-01:1. VPDES Permit Program Regulation.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 15, 1993 - 2 p.m.

June 21, 1993 - 3 p.m.

June 22, 1993 - 3 p.m.

June 23, 1993 - 1:30 p.m.

June 23, 1993 - 7:30 p.m.

June 30, 1993 - 2 p.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(See Calendar of Events section for additional information)

Summary:

In 1975 the U.S. Environmental Protection Agency delegated its authority to administer the National Pollutant Discharge Elimination System (NPDES) permit program to the State Water Control Board (SWCB). Any point source discharge of pollutants to surface waters is now subject to regulation under a Virginia Pollutant Discharge Elimination System (VPDES) permit. One of the requirements of the delegation of permit authority from the EPA is that Virginia adopt and maintain regulations for the administration of the VPDES program which reflect the most recent federal NPDES regulations. The VPDES regulation must be at least as stringent as its federal counterpart. The current Permit Regulation (VR 680-14-01) was last amended in 1989 and it does not represent the latest changes to the federal regulations. The adoption of the proposed regulation will replace the VPDES portion of the existing Permit Regulation and it is being done concurrently with the repeal of VR 680-14-01. The text of the proposed regulation will follow that of the federal NPDES permit regulations as closely as possible.

This proposed regulation (i) includes definitions specific to the VPDES permitting process; (ii) delineates when permits are required, when permits are prohibited, and lists activities which are excluded from the need for a permit; (iii) establishes the information requirements for applying for a VPDES permit; (iv) acknowledges the board's authority to issue permits to special program areas such as storm water, concentrated animal feeding operations, concentrated aquatic animal production facilities, aquaculture projects, silviculture activities, and general permits; (v) lists conditions which are applicable to all permits and those applicable to specified categories of permits; (vi) describes the process by which the board shall establish limits and conditions in permits; (vii) includes provisions for public involvement in the permit issuance process; (viii) establishes causes for the transfer, modification, revocation and reissuance, and termination of permits; (ix) establishes standards for the use or disposal of sewage sludge; (x) includes pretreatment regulations for existing and new sources which discharge to publicly owned treatment works; (xi) identifies the board's intention to enforce permits; and (xii) delegates the authority to administer the VPDES permit program for coal mine discharges to the Department of Mines, Minerals and Energy.

* * * * *

Title of Regulation: VR 680-14-03. Toxics Management Regulation. (REPEALING)

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 15, 1993 - 2 p.m.

June 21, 1993 - 3 p.m.

June 22, 1993 - 3 p.m.

June 23, 1993 - 1:30 p.m.

June 23, 1993 - 7:30 p.m.

June 30, 1993 - 2 p.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(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 (SWCB) intends to repeal the Toxics Management Regulation (VR 680-14-03). This regulation delineates the authority and general procedures to be followed in connection with identifying and eliminating surface water discharges of toxics pollutants. This action is being proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (VR 680-14-01:1). The VPDES Permit Regulation will include language on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations. The testing requirements and decision criteria of the Toxics Management Regulation will be used as staff guidance in the implementation of the toxics control provisions of the VPDES Permit Regulation.

* * * * *

Title of Regulation: VR 680-14-16. General Permit for Storm Water Discharges Associated with Heavy Manufacturing Facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 21, 1993 - 11 a.m.

June 23, 1993 - 10:30 a.m.

(See Calendar of Events section for additional information)

Summary:

The Clean Water Act regulates, through the National

Pollutant Discharge Elimination System (NPDES) permit program, point source discharges of storm water. On November 16, 1990, the Environmental Protection Agency (EPA) published the final NPDES Permit Application Regulations for Storm Water Discharges. This regulation established permit application requirements for storm water discharges associated with industrial activity. One option for these discharges is the submittal of a Notice of Intent to be covered under a general permit. The Commonwealth of Virginia received authorization in 1975 to administer the NPDES program under state law. On May 20, 1991, the Commonwealth was authorized to administer a VPDES General Permit Program. NPDES is the federal designation for the EPA administered permitting program and VPDES is the state designation for the state administered program. Upon EPA's promulgation of the storm water regulations, EPA delegated to the states implementation of the storm water program.

The purpose of this proposed regulation is to authorize storm water discharges associated with heavy manufacturing facilities through the development and issuance of a VPDES general permit. Heavy manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget SIC Manual 1987). The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and perform monitoring and reporting procedures. The pollution prevention plan is intended to identify potential sources of pollutants in storm water discharges and describe and ensure the implementation of practices used to reduce the pollutants in storm water discharges. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

The State Water Control Board will administer this program. The VPDES general permit will be issued to the permittee, upon receipt of a complete Registration Statement, to authorize storm water discharges associated with industrial activity from heavy manufacturing facilities.

VR 680-14-16. General Permit for Storm Water Discharges Associated with Heavy Manufacturing Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01:1 (Permit Regulations) unless the context clearly indicates otherwise, except that for the purposes of

Proposed Regulations

this regulation:

"Industrial activity" includes the following categories of facilities, which are considered to be engaging in industrial activity:

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992), except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition;

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987) and as further defined as heavy manufacturing facilities;

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage

yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operation, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act. (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either

Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the

above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 2 of the definition of industrial activity, heavy manufacturing facilities, as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from heavy manufacturing facilities provided that the discharge is through a point source to surface waters of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), (14) of § 62.1-44.15 and §§ 62.1-44.16, 62.1-44.17, 62.1-44.20, 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the VPDES Permit Regulation (VR 680-14-01:1).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Complete Registration Statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on . . . This general permit will expire five years from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not

Proposed Regulations

establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a VPDES permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharge and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner of a heavy manufacturing facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall file a complete VPDES general permit registration statement in accordance with this regulation. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date

of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file a complete registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES

1. Facility Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

2. Facility Location

Name:

Address:

City: State: Zip Code:

If street address unavailable: Lat Long

3. Status: (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification (SIC) Code:

Secondary SIC Codes:

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? . . . Yes . . . No

If yes, operator name of the MS4

6. Receiving Water Body (e.g., Clear Creek or unnamed Tributary to Clear Creek):

7. Other Existing VPDES Permit Numbers:

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals?

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code § 62.1-44.15:3.

10. Certification:

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"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."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

Basin. . . . Stream Class Section

Special Standards

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR
STORM WATER DISCHARGES ASSOCIATED
WITH INDUSTRIAL ACTIVITY FROM HEAVY
MANUFACTURING FACILITIES

1. VPDES Storm Water General Permit Number:
2. Check here if you are no longer the owner/operator of the facility:
3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated:
4. Facility Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

5. Facility Location

Name:

Address:

City: State: Zip Code:

6. Certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director or his designee will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation (VR 680-14-01:1).

General Permit No.: VAR16xxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER
DISCHARGES ASSOCIATED WITH INDUSTRIAL
ACTIVITY FROM HEAVY MANUFACTURING
FACILITIES

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*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/operators of heavy manufacturing facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation 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, Part III - Storm Water Pollution Prevention Plan, and Part IV - Management Requirements, as set forth herein.

PART I

A. 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 point sources, storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Phosphorus (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute whole effluent toxicity	NA	NL	1/6M	Grab**
Section 313 water priority chemicals***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency

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Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I

A. 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 point sources storm water associated with industrial activity at facilities that are classified as Standard Industrial Classification (SIC) 33 (Primary Metal Industry).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Cadmium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Arsenic (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Chromium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Dissolved Hexavalent Chromium (ug/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Effluent Guideline Pollutants***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
4. Facilities classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for cadmium, copper, arsenic, chromium or acute whole effluent toxicity but must monitor for the other parameters listed above.
- * Estimate of the total volume of the discharge during the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable,

then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. 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 point sources storm water associated with industrial activity at areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities classified as Standard Industrial Classification (SIC) 24 (Lumber and Wood Products).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Pentachlorophenol (ug/l)***	NA	NL	1/6M	Grab/Composite**
Copper (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Arsenic (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Chromium (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Acute Whole Effluent Toxicity***	NA	NL	1/6M	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- * Estimate of the total volume of the discharge during the storm event.

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- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
- *** Facilities that use chlorophenolic formulations shall measure for pentachlorophenol and acute whole effluent toxicity. Facilities that use creosote formulations shall measure for acute whole effluent toxicity. Facilities that use chromium-arsenic formulations shall measure for arsenic, chromium and copper.

PART I

A. 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 point sources containing coal pile storm water runoff.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MG)</u>	<u>NA</u>	<u>NL</u>	<u>1/6M</u>	<u>Estimate*</u>
<u>Oil and Grease (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/6M</u>	<u>Grab**</u>
<u>Total Suspended Solids (mg/l)</u>	<u>NA</u>	<u>50 mg/l</u>	<u>1/6M</u>	<u>Grab**</u>
<u>pH (SU)</u>	<u>6.0</u>	<u>9.0</u>	<u>1/6M</u>	<u>Grab**</u>
<u>Copper (total recoverable) (ug/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/6M</u>	<u>Grab/Composite**</u>
<u>Nickel (total recoverable) (ug/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/6M</u>	<u>Grab/Composite**</u>
<u>Zinc (total recoverable) (ug/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/6M</u>	<u>Grab/Composite**</u>

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. Coal pile runoff shall not be diluted with storm water or other flows in order to meet these limitations.
4. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1996, will constitute a violation of this permit.
5. There shall be no discharge of floating solids or visible foam in other than trace amounts.

- * Estimate of the total volume of the discharge during the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

PART I

A. 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 point sources, storm water associated with industrial activity that comes in contact with storage piles for solid chemicals used as raw materials at facilities classified as Standard Industrial Classification (SIC) 28 (Chemicals and Allied Products) except SIC 283 (Drugs).

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MG)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Estimate*</u>
<u>Oil and Grease (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Chemical Oxygen Demand (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Suspended Solids (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>pH (SU)</u>	<u>NL</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Effluent Guideline Pollutants***</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>

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NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
 3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- * Estimate of the total volume of the discharge from the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
- *** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. 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 point sources, storm water associated with industrial activity that comes in contact with lime storage piles that are exposed to storm water at lime manufacturing facilities.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MG)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Estimate*</u>
<u>Oil and Grease (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Chemical Oxygen Demand (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Suspended Solids (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>pH (SU)</u>	<u>NL</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Effluent Guideline Pollutants***</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
 3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- * Estimate of the total volume of the discharge during the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
- *** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. 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 point sources, storm water associated with industrial activity at cement manufacturing facilities and cement kilns.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

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NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
 3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- * Estimate of the total volume of the discharge during the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
- *** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

- L. 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 point sources, storm water associated with industrial activity at facilities classified as Standard Industrial Classification (SIC) 3273 (Ready Mix Concrete).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
 3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- * Estimate of the total volume of the discharge during the storm event.
- ** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
- *** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. 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 point sources, storm water associated with industrial activity at facilities classified as Standard Industrial Classification (SIC) 373 (Ship and Boat Building and Repairing).

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MG)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Estimate*</u>
<u>Oil and Grease (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Chemical Oxygen Demand (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Suspended Solids (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>pH (SU)</u>	<u>NL</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Effluent Guideline Pollutants***</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>

Proposed Regulations

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
 3. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- Estimate of the total volume of the discharge during the storm event.
 - ** The grab sample shall be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
 - *** Any pollutant limited in an effluent guideline to which the facility is subject.

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:

a. Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992));

b. This permit; or

c. Other methods approved by the board.

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, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration, in hours, of the storm event(s) sampled;

8. The rainfall measurements or estimates, in inches, of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and

the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the State Water Control Law, Clean Water Act or the VPDES Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department of Environmental Quality, Water Division's Headquarters Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

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b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the director within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Departments of Environmental Quality, Water Division's headquarters staff cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement and Notice of Termination.

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 had 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 director shall be signed by:

a. One of the persons described in subdivision 1 a, 1 b, or 1 c of this subsection; 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 subdivision 1 a, 1 b, or 1 c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation 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 director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain with the other records and information resulting from monitoring activities as required under subsection C of this part, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, or electrical storms) or otherwise make the collection of a sample impracticable (drought or extended frozen conditions). Dischargers are precluded from exercising this waiver more than once during a two-year period. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area, in square feet, and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of this part (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are

located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made a part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR Part 122 (1992) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameters identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test Procedures.* The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted twice per year on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1996, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the

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source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by October 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1993, 180 days after submitting a Registration Statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe the procedure of any test conducted for the presence of nonstorm water discharges; the results of such test or other relevant observations; potential sources of nonstorm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the effective date of this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities

subject to subdivisions D 7 (EPCRA Section 313) and D 8 (salt storage) of this part shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable but, except as provided below, not later than October 1, 1996. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1993, shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of subdivisions D 7 and D 8 of this part shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in subdivision A 1 or A 2 of this part of this permit.

4. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a facility with a storm water discharge associated with industrial activity that submits a Registration Statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements) and be retained on-site at the facility which generates the storm water discharge in accordance with subsection C of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, his authorized representative, or, in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director or authorized representative may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director (or as otherwise provided by the director) or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance,

which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or when the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. *Pollution prevention team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of potential pollutant sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c (spills and leaks) of this part of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in

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storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of exposed materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk identification and summary of potential pollutant sources.* A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand) of concern shall be identified.

3. *Measures and controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified

potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good housekeeping.* Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators or catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill prevention and response procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and internal reporting procedures.* A description of incidents such as spills, or other discharges, along with other information describing

the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Nonstorm water discharges.

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the director in accordance with subsection O of Part II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision M 2 of Part II (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or sources of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall

provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 (description of potential pollutant sources) of this part of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention or retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 (description of potential pollutant sources) of this part of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 (measures and controls) of this part of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify

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any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to-Know Act (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control and/or

diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at

truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by paragraphs subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume, in gallons, of discharges from containment areas, in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivision D 7 b (1), (2), (3) or (4)) of this part, from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to surface waters of the state, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges, shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws

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and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as Section 313 water priority chemicals where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to surface waters of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1996. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of termination.

1. The owner of the facility shall submit a Notice of Termination to the director that is signed in accordance with subsection G of Part, where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges

associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director.

PART IV. 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 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

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 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. 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.

All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

1. 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.

2. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

3. 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. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. 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 except for any toxic standard imposed under Section 307(a) of 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 other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit 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, or any infringement of federal, state, or local laws or regulations.

I. Severability.

The provisions of this permit are severable.

J. Duty to reregister.

If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new and complete registration statement at least 120 days before the expiration date of this permit.

K. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials to:

1. Enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) are located or in which any records are required to be kept under the terms and conditions of this permit;

2. Have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. Inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. Sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. 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.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director 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 director does not within the 30-day time period

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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.

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, if appropriate, in accordance with the Virginia Freedom of Information Act.

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 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.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the VPDES Permit Regulation (VR 680-14-01:1) and in accordance with other sections of this permit (subsections N, O and Q of this part).

Q. When an individual permit may be required.

The director 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 discharge(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 hearing.

R. 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.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. 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 state waters and make them detrimental (i) to the public health, (ii) to animal or aquatic life, (iii) to the uses of such waters for domestic or industrial consumption, (iv) for recreation, or (v) for other uses.

* * * * *

Title of Regulation: VR 680-14-17. General Permit for Storm Water Discharges from Light Manufacturing Facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 21, 1993 - 11 a.m.

June 23, 1993 - 10:30 a.m.

June 30, 1993 - 10:30 a.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(See Calendar of Events section for additional information)

Summary:

The Clean Water Act regulates, through the National Pollutant Discharge Elimination System (NPDES) permit program, point source discharges of storm water. On November 16, 1990, the Environmental Protection Agency (EPA) published the final NPDES Permit Application Regulations for Storm Water Discharges. This regulation established permit application requirements for storm water discharges associated with industrial activity. One option for these discharges is the submittal of a Notice of Intent to be covered under a general permit. The Commonwealth of Virginia received authorization in 1975 to administer the NPDES program under state law. On May 20, 1991, the Commonwealth was authorized to administer a VPDES General Permit Program. NPDES is the federal designation for the EPA administered permitting program and VPDES is the state designation for the state administered program. Upon EPA's promulgation of the storm water regulations, EPA delegated to the states implementation of the storm water program.

The purpose of this proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. Light manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25 (Office of Management and Budget SIC Manual 1987). The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan

and perform monitoring and reporting procedures. The pollution prevention plan is intended to identify potential sources of pollutants in storm water discharges and describe and ensure the implementation of practices used to reduce the pollutants in storm water discharges. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia National Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

The State Water Control Board will administer this program. The VPDES general permit will be issued to the permittee, upon receipt of a complete Registration Statement, to authorize storm water discharges associated with industrial activity from light manufacturing facilities.

VR 680-14-17. General Permit for Storm Water Discharges from Light Manufacturing Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01.1 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Industrial activity" includes the following categories of facilities, which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition);
2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);
3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water

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contaminate by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with

Section 405 of the Clean Water Act (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10 and which are further defined as light manufacturing facilities.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) that meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "Industrial Activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards;

immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "Industrial Activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 11 of the definition of "industrial activity," light manufacturing facilities, as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from light manufacturing facilities provided that the discharge is through a point source to surface waters of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.16, 62.1-44.17, 62.1-44.20, and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the VPDES Permit Regulation (VR 680-14-01:1).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the

emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Those registration statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective This general permit will expire five years from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.
2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.
3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.
4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.
5. Other sources of storm water discharges. This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharges and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the

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discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration Statement and Notice of Termination.

A. The owner of a light manufacturing facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall file a complete VPDES general permit registration statement in accordance with this regulation. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

**VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT
FOR STORM WATER DISCHARGES ASSOCIATED
WITH INDUSTRIAL ACTIVITY FROM LIGHT
MANUFACTURING FACILITIES**

1. Facility Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

2. Facility Location

Name:

Address:

City: State: Zip Code:

3. Status (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification Code (SIC)
Secondary SIC Codes:

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? Yes . . . No . . .
If yes, operator name of the MS4

6. Receiving Water Body (e.g. Clear Creek or unnamed Tributary to Clear Creek)

7. Other Existing VPDES Permit Numbers
.

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals?

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code Section 62.1-44.15:3.

10. 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."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

Basin Stream Class Section

Special Standards
.

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit

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are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

**VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES**

1. VPDES Storm Water General Permit Number

2. Check here if you are no longer the owner/operator of the facility

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated

4. Facility Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

5. Facility Location

Name:

Address:

City: State: Zip Code:

6. Certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the state is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director or his designee will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation (VR 680-14-01:1).

General Permit No.: VAR17xxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES 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/operators of light manufacturing facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation 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, Part III - Storm Water Pollution Prevention Plan and Part IV - Management Requirements, as set forth herein.

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PART I

A. 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 point sources storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Phosphorus (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Section 313 Water Priority Chemicals***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency

Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I

A. 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 point sources, storm water associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>EFFLUENT CHARACTERISTICS</u>	<u>DISCHARGE LIMITATIONS</u>		<u>MONITORING REQUIREMENTS</u>	
	<u>Minimum</u>	<u>Maximum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MG)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Estimate*</u>
<u>Oil and Grease (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>BOD5 (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Suspended Solids (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Kjeldahl Nitrogen (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>Total Phosphorus (mg/l)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab/Composite**</u>
<u>pH (SU)</u>	<u>NL</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>
<u>Fecal Coliform (N/CML)</u>	<u>NA</u>	<u>NL</u>	<u>1/YR</u>	<u>Grab**</u>

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

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PART I

A. 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 point sources, storm water associated with industrial activity that comes in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as Standard Industrial Classification (SIC) 30 (Rubber and Miscellaneous Plastics Products).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

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:

a. Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992));

b. This permit; or

c. Other methods approved by the board.

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 ensure accuracy of measurements, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and

the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the VPDES Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department of Environmental Quality, Water Division Headquarters Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

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b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department of Environmental Quality, Water Division Headquarters Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Department of Environmental Quality, Water Division Headquarters staff cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement and Notice of Termination.

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 had 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 director shall be signed by:

a. One of the persons described in subdivision 1 a, b, or c of this subsection; 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 subdivision 1 a, b, or c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation 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 director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with

a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain with the other records and information resulting from the monitoring activities as required under subsection C of Part II, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two-year period. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of Part II (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant

materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR Part 122 (1992) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test procedures. The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1996, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make

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appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by October 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1993, 180 days after submitting a Registration Statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe the procedure of any test conducted for the presence of nonstorm water discharges, the results of such test or other relevant observations, potential sources of nonstorm water discharges to the storm sewer, and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the effective date of this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities

subject to subdivisions D 7 (EPCRA Section 313) and D 8 (silt storage) of this part shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but except as provided below, not later than October 1, 1996. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1993, shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of subdivisions D 7 and D 8 of this part shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in subdivision A 1 or A 2 of this part of this permit.

4. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a facility with a storm water discharge associated with industrial activity that submits a Registration Statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with subsection E of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director (or as otherwise provided by the director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance,

which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 (description of potential pollutant sources) of this part of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. *Pollution prevention team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of potential pollutant sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c (spills and leaks) of this part of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of

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the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processes, and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and

implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedure.

A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Nonstorm water discharges.

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the director in accordance with subsection O of Part II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision M 2 of Part II (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water

runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 (description of potential pollutant sources) of this part of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 (description of potential pollutant sources) of this part of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 (measures and controls) of this part of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm

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water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the Clean Water Act or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to-Know (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these

chemicals to mix with storm water discharges, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313

water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas in accordance with subsection C

of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivisions D 7 b (1), (2), (3) or (4) of this part), from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to surface waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges shall be trained in and informed of preventive measures at the facility.

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Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a surface water of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1996. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of termination.

1. The owner of the facility shall submit a Notice of Termination to the director, that is signed in accordance with subsection G of Part II, where all storm water discharges associated with industrial activity that are authorized by this permit are

eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director.

PART IV. 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 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

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 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. 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. 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. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant

management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

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.

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 except for any toxic standard imposed under Section 307(a) of 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 other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit 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. Duty to reregister.

If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

K. 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 subsection, 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.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written

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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 director 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.

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, if appropriate, in accordance with the Virginia Freedom of Information Act.

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; or

3. When the level of discharge of or management of a 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.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the VPDES Permit Regulation (VR 680-14-01:1) and in accordance with subsections N, O and Q of this part of this permit).

Q. When an individual permit may be required.

The director 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 discharge(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 hearing.

R. 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.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters: sewage, industria

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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 680-14-18. General Permit for Storm Water Discharges from Transportation Facilities; Landfills, Land Application Sites and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 21, 1993 - 11 a.m.

June 23, 1993 - 10:30 a.m.

June 30, 1993 - 10:30 a.m.

Written comments may be submitted until 4 p.m. on July 17, 1993.

(See Calendar of Events section for additional information)

Summary:

The Clean Water Act regulates, through the National Pollutant Discharge Elimination System (NPDES) permit program, point source discharges of storm water. On November 16, 1990, the Environmental Protection Agency (EPA) published the final NPDES Permit Application Regulations for Storm Water Discharges. This regulation established permit application requirements for storm water discharges associated with industrial activity. One option for these discharges is the submittal of a Notice of Intent to be covered under a general permit. The Commonwealth of Virginia received authorization in 1975 to administer the NPDES program under state law. On May 20, 1991, the Commonwealth was authorized to administer a VPDES General Permit Program. NPDES is the federal designation for the EPA administered permitting program and VPDES is the state designation for the state administered program. Upon EPA's promulgation of the storm water regulations, EPA delegated to the states implementation of the storm water programs.

The purpose of this proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities through the development and issuance of a VPDES general permit. The proposed regulation will cover the facilities defined as follows: (i) transportation facilities classified as Standard

Industrial Classification (SIC) 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (Office of Management and Budget SIC Manual 1987); (ii) landfills, land application sites and open dumps that receive or have received any industrial wastes including those that are subject to regulation under Subtitle D of the Resource Conservation and Recovery Act (42 USC 6901 et seq.); (iii) facilities involved in the recycling of materials including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093; and (iv) steam electric power generating facilities. The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and perform monitoring and reporting procedures. The pollution prevention plan is intended to identify potential sources of pollutants in storm water discharges and describe and ensure the implementation of practices used to reduce the pollutants in storm water discharges. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

The State Water Control Board will administer this program. The VPDES general permit will be issued to the permittee, upon receipt of a complete Registratin Statement, to authorized storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities.

VR 680-14-18. General Permit for Storm Water Discharges Associated with Transportation Facilities; Landfills, Land Application Sites, and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01:1 (Permit Regulations) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Industrial activity" includes the following categories of facilities, which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under category (11) of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33,

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3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with, or that has come into contact with, any overburden, raw materia, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operation, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or

9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act. (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 Water Priority Chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have

the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 4 landfills, land application sites and open dumps; subdivision 6 materials recycling facilities; subdivision 7 steam electric power generating facilities; and subdivision 8 transportation facilities of the definition of "industrial activity" as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from these facilities provided that the discharge is through a point source to surface water of the state or through a municipal or nonmunicipal separate storm sewer system to surface

waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.16, 62.1-44.17, 62.1-44.20, and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the VPDES Permit Regulation (VR 680-14-01.1).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Those registration statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective This general permit will expire five years from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of Section 8, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.
2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.
3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15.3 of the Code of Virginia.

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4. *Endangered or threatened species.* The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. *Other sources of storm water discharges.* This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharges and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner shall file a complete VPDES general permit registration statement for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites, and open dumps; materials recycling facilities; and steam electric power generating facilities. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and submit a complete registration statement at least 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM GENERAL PERMIT REGISTRATION
STATEMENT FOR STORM WATER DISCHARGES
ASSOCIATED WITH INDUSTRIAL ACTIVITY
FROM TRANSPORTATION FACILITIES;
LANDFILLS, LAND APPLICATION SITES AND

OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES

1. Facility Owner

Name:

Mailing Address:

City:..... State:..... Zip Code:.....

Phone:.....

2. Facility Location

Name:

Address:.....

City:..... State:..... Zip Code:.....

3. Status: (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification Code (SIC) Secondary SIC Codes:

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? Yes..... No..... If yes, operator name of the MS4

6. Receiving Water Body (e.g. Clear Creek or unnamed Tributary to Clear Creek)

7. Other Existing VPDES Permit Numbers

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals?

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code § 62.1-44.15.3.

10. 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

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knowing violations.”

Print Name:

Title:

Signature:

Date:

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by:

Date:

Basin..... Stream Class..... Section.....

Special Standards

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES

1. VPDES Storm Water General Permit Number

2. Check here if you are no longer the owner/operator of the facility

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated

4. Facility Owner

Name:

Mailing Address:

City:..... State:..... Zip Code:.....

Phone:

5. Facility Location

Name:

Address:

City:..... State:..... Zip Code:.....

6. Certification:

“I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act.”

Print Name:

Title:

Signature:

Date:

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the executive director or his designee will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation (VR 680-14-01:1).

General Permit No.: VAR18xxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW.

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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/operators of transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation 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, Part III - Storm Water Pollution Prevention Plan and Part IV - Management Requirements, as set forth herein.

PART I.

A. 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 point sources, storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NO	1/6M	Estimate*
Oil and Grease (mg/l)	NO	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**

Total Phosphorus (mg/l)	NA	NO	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Section 313 Water Priority Chemicals***	NA	NL	1/6M	Grab/Composite**

NL=No Limitation, monitoring required

NA=Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I.

A. 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 point sources, storm water associated with industrial activity at any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from construction sites).

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Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Organic Carbon (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Dissolved Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**
Magnesium (dissolved) (ug/l)	NA	NL	1/6M	Grab/Composite**
Magnesium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Arsenic (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Barium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Cadmium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Chromium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Dissolved Hexavalent Chromium (ug/l)	NA	NL	1/6M	Grab/Composite**
Cyanide (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Mercury (total) (ug/l)	NA	NL	1/6M	Grab/Composite**
Selenium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Fecal Coliform (N/CML)				

	NA	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

PART I.

A. 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 point sources, storm water associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**

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Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite
pH (SU)	NL	NL	1/6M	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

PART I.

A. 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 point sources, storm water associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) at airports with over 50,000 flight operations per year. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*

Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
BOD5 (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Deicing Materials***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

*** Monitoring shall be for the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).

PART I.

A. 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 point sources, storm water associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/YR	Grab/Composite**
Nickel (total recoverable) (ug/l)	NA	NL	1/YR	Grab/Composite
Zinc (total recoverable) (ug/l)	NA	NL	1/YR	Grab/Composite
pH (SU)	NL	NL	1/YR	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

PART I.

A. 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 point sources, storm water associated with industrial activity from areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) that are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) that are exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being

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separated by a minimum period of 15 minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I.

A. 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 point sources, storm water associated with industrial activity from oil handling sites at oil fired steam electric power generating facilities.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with

a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

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:

a. Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992));

b. This permit; or

c. Other methods approved by the board.

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, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the VPDES Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or

management requirements specified in this permit, the permittee shall submit to the Department of Environmental Quality, Water Division Headquarters Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department of Environmental Quality, Water Division Headquarters Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses; (ii) upsets; (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities; (iv) breakdown of processing or accessory equipment; (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities; or (vi) flooding or other acts of nature.

If the Department of Environmental Quality, Water Division Headquarters staff cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or

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notice of termination required by this permit shall be signed as follows:

1. Registration statement/notice of termination.

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 had 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 director shall be signed by:

a. One of the persons described in subdivisions 1 a, 1 b, or 1 c of this subsection; 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 subdivision 1 a, 1 b, or 1 c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation 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 director prior to or together with any separate information,

registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain on site with the other records and information resulting from monitoring activities as required under subsection C of this part, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two year period. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of this part (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made a part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test procedures.* The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with *Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms*, (EPA/600/4-90-027 Rev. 9/91, § 6.1). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with

the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1996, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 (1992) and 40 CFR part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 (1992) or 40 CFR 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

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2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by October 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after October 1, 1993, 180 days after submitting a Registration Statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: (i) the procedure of any test conducted for the presence of nonstorm water discharges; (ii) the results of such test or other relevant observations; (iii) potential sources of nonstorm water discharges to the storm sewer; and (iv) why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the effective date of this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance

with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to subdivisions D 7 (EPCRA Section 313) and D 8 of this part (salt storage) shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but except as provided below, not later than October 1, 1996. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1993, shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of subdivisions D 7 and D 8 of this part, shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in subdivision A 1 or A 2 of this part of this permit.

4. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a facility with a storm water discharge associated with industrial activity that submits a Registration Statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements) and be retained on-site at the facility which generates the storm water discharge in accordance with subsection E of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, authorized representative, or, in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director, (or as otherwise provided by the director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes

have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. *Pollution prevention team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of potential pollutant sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c of this part (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and

storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. *Inventory of exposed materials.* An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. *Spills and leaks.* A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. *Sampling data.* A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. *Risk identification and summary of potential pollutant sources.* A narrative description of the potential pollutant sources from the following activities: (i) loading and unloading operations; (ii) outdoor storage activities; (iii) outdoor manufacturing or processing activities; (iv) significant dust or particulate generating processes; and (v) on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for

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each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concern shall be identified.

3. *Measures and controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. *Good housekeeping.* Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. *Preventive maintenance.* A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. *Spill prevention and response procedures.* Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. *Inspections.* In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water

pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and internal reporting procedures.* A description of incidents such as spills or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Nonstorm water discharges.*

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the director in accordance with Subsection O of Part II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision M 2 of Part II (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. *Sediment and erosion control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. *Management of runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 of this part (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive site compliance evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

a. *Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.*

b. *Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 of this part (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 of this part (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.*

c. *A report summarizing the scope of the*

inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. *Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.*

a. *In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.*

b. *Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.*

6. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to-Know (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the*

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implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: (i) the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; (ii) a strong spill contingency and integrity testing plan; or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return

the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivision D 7 b (1), (2), (3) or (4)) of this part, from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to surface waters of the state, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313

water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering Certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a surface water of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than October 1, 1996. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of Termination.

1. The owner of the facility shall submit a Notice of

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Termination to the director, that is signed in accordance with subsection G of Part II, where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted.

PART IV. 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 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

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 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. 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. 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. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions

of this permit; and

c. 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. 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.

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 except for any toxic standard imposed under Section 307(a) of 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 other appropriate requirements of the state Water Control Law not related to the activities authorized by this storm water general permit 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. Duty to reregister.

If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

K. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials to:

1. Enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) are located or in which any records are required to be kept under the terms and conditions of this permit;
2. Have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
3. Inspect at reasonable times any monitoring equipment or monitoring method required in this permit;
4. Sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and
5. 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.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director 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 director 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.

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, if appropriate, in accordance with the Virginia Freedom of Information Act.

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; or
3. When the level of discharge of or management of a 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.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modification, revocation, reissuance, and termination.

This general permit may be modified, revoked, reissued, or terminated pursuant to the VPDES Permit Regulation (VR 680-14-01:1) and in accordance with other sections of this permit subsections N, O and Q of this part.

Q. When an individual permit may be required.

The director may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may

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be required include, but are not limited to, the following:

1. The discharge(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; and
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 hearing.

R. 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.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil liability and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. 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 state waters and make them detrimental to the public health, animal or aquatic life, domestic or industrial consumption, recreation, or for other uses.

* * * * *

Title of Regulation: VR 680-14-19. General Permit for Storm Water Discharges from Construction Sites.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 21, 1993 - 11 a.m.

June 23, 1993 - 10:30 a.m.

June 30, 1993 - 10:30 a.m.

Written comments may be submitted until 4 p.m. on July 17, 1993.

(See Calendar of Events section for additional information)

Summary:

The Clean Water Act regulates, through the National Pollutant Discharge Elimination System (NPDES) permit program, point source discharges of storm water. On November 16, 1990, the Environmental Protection Agency (EPA) published the final NPDES Permit Application Regulations for Storm Water Discharges. This regulation established permit application requirements for storm water discharges associated with industrial activity. One option for these discharges is the submittal of a Notice of Intent to be covered under a general permit. The Commonwealth of Virginia received authorization in 1975 to administer the NPDES program under state law. On May 20, 1991, the Commonwealth was authorized to administer a VPDES General Permit Program. NPDES is the federal designation for the EPA administered permitting program and VPDES is the State designation for the state administered program. Upon EPA's promulgation of the storm water regulations, EPA delegated to the states implementation of the storm water program.

The purpose of this proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities through the development and issuance of a VPDES general permit. The proposed regulation will cover the facilities defined as follows: (1) transportation facilities classified as Standard Industrial Classification (SIC) 40, 41, 42 (except

4221-4225), 43, 44, 45, and 5171 (Office of Management and Budget SIC Manual 1987); (2) landfills, land application sites and open dumps that receive or have received any industrial wastes including those that are subject to regulation under Subtitle D of the Resource Conservation and Recovery Act (42 USC 6901 et seq.); (3) facilities involved in the recycling of materials including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093; and (4) steam electric power generating facilities. The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and perform monitoring and reporting procedures. The pollution prevention plan is intended to identify potential sources of pollutants in storm water discharges and describe and ensure the implementation of practices used to reduce the pollutants in storm water discharges. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

The State Water Control Board will administer this program. The VPDES general permit will be issued to the permittee, upon receipt of a complete Registration Statement, to authorize storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities.

VR 680-14-19. General Permit for Storm Water Discharges from Construction Sites.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01:1 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Final stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures (such as the use of mulches or geotextiles) have been employed.

"Industrial activity" includes the following categories of facilities which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

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8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10 of this definition.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste

material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 10 of the definition of industrial activity, construction activity as previously defined. Construction activities include, but are not limited to, clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. Storm water discharges associated with subdivisions 1 through 9 and 11 of the definition of industrial activity, as previously defined, shall not have coverage under this general permit.

This general permit covers only discharges comprised solely of storm water from construction activities which result in the disturbance of five or more total acres land area on a site provided that the discharge is through a point source to a surface water of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15

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and §§ 62.1-44.16, 62.1-44.17, 62.1-44.20 and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the VPDES Permit Regulation (VR 680-14-01:1).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Complete Registration Statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on This general permit will expire five years from the effective date. This general permit is effective as to any covered owner/operator upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation (VR 680-14-01:1). Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges.
2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.
3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.
4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state water may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. Storm water discharges from construction sites that are mixed with a storm water discharge from an industrial activity other than construction may be authorized by this permit where: (i) the industrial activity other than construction is located on the same site as the construction activity; and (ii) storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different VPDES general permit or individual permit authorizing such discharges. The permittee shall obtain coverage under this VPDES general permit for the construction activity discharge and a VPDES general or individual permit for the industrial activity discharge.

The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge. The storm water permit authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner shall file a complete VPDES general permit registration statement for storm water discharges from construction activities. Any owner proposing a new discharge shall file the registration statement at least 14 days prior to the date planned for commencing the construction activity. Any owner of an existing construction activity covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing construction activity not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES.

1. Construction Site Owner.

Name:

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- Mailing Address:
- City: State: Zip Code:
- Phone:
2. Construction Site Operator
- Name:
- Mailing Address:
- City: State: Zip Code:
- Phone:
3. Location of Construction Site
- Name:
- Address:
- City: State: Zip Code:
- If street address unavailable: Lat
Long
4. Status (Federal, State, Public, or Private)
5. Is Storm Water Runoff discharged to a Municipal
Separate Storm Sewer System (MS4)? . . . Yes . . . No
- If yes, operator name of the MS4
6. Receiving Water Body (i.e. Clear Creek or unnamed
Tributary to Clear Creek)
7. Other Existing VPDES Permit Numbers
8. Project Start Date
9. Project Completion Date
10. Total Land Area (acres)
11. Estimated Area to be Disturbed (acres)
12. Is the Storm Water Pollution Prevention Plan in
Compliance with State and/or Local Sediment and Erosion
Control Plans? . . . Yes . . . No
- If no, explain
13. Brief Description of Construction Activity
-
-
14. The owner/operator must attach to this Registration
Statement the notification (Local Government Ordinance
Form) from the governing body of the county, city or

town as required by § 62.1-44.15:3 of the Code of Virginia.

15. 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."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

Basin Stream Class Section

Special Standards

B. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the owner of the facility shall submit a Notice of Termination within 30 days after final stabilization has been achieved. The required notice of termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR
STORM WATER DISCHARGES FROM
CONSTRUCTION ACTIVITIES.

1. VPDES Storm Water General Permit Number

2. Check here if you are no longer the owner/operator
of the facility . . .

3. Check here if the Storm Water Discharges from the
Construction Site have been terminated . . .

4. Construction Site Owner

Name:

Mailing Address:

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City: State: Zip Code:

Phone:

5. Construction Site Operator

Name:

Mailing Address:

City: State: Zip Code:

Phone:

6. Location of Construction Site

Name:

Address:

City: State: Zip Code:

If street address unavailable: Lat Long

Certification:

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time, or that all storm water discharges associated with industrial activity from the identified facility that are authorized by a VPDES general permit have been eliminated. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity by the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit."

Print Name:

Title:

Signature: Date:

.....
For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director or his designee will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation (VR 680-14-01:1).

General Permit No.: VAR19xxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES 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/operators of construction sites (those sites or common plans of development or sale that will result in the disturbance of five or more acres total land area) with storm water discharges associated with industrial activity from these construction sites are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where Board regulation 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, Part III - Storm Water Pollution Prevention Plan, and Part IV - Management Requirements, as set forth herein.

PART I. 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 point sources, storm water from construction sites.

Such discharges shall be limited and monitored by the permittee as specified below:

NO LIMITATIONS OR MONITORING REQUIRED

2. There shall be no discharge of floating solids or visible foam in other than trace amounts.

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

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requirements set forth in:

a. *Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992));*

b. *This permit; or*

c. *Other methods approved by the board.*

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, in accordance with approved EPA and state protocols.*

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.*

7. *The date and duration (in hours) of the storm event(s) sampled;*

8. *The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and*

9. *The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.*

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample,

measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the VPDES Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. *If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department of Environmental Quality, Water Division Headquarters Office, as quickly as possible upon discovery, at least the following information:*

a. *A description and cause of noncompliance;*

b. *The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and*

c. *Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.*

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days.

The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department of Environmental Quality, Water Division Headquarters Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Department of Environmental Quality, Water Division Headquarters staff cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement/Notice of Termination.

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 had 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 director shall be signed by:

a. One of the persons described in subdivision 1 a, 1 b, or 1 c of this subsection; 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 subdivision 1 a, 1 b, or 1 c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation 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 director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed

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entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 5 of Part III: discharges from fire fighting activities; fire hydrant flushing; waters used to wash vehicles or control dust in accordance with subdivision D 2 c (2) of Part III; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

I. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a construction site shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the site. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24 hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

PART III.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution

which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with industrial activity at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For construction activities that have begun on or before the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning within 30 days after the effective date of this permit.

2. For construction activities that have begun after the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning with the commencement of construction activities.

3. For ongoing construction activity involving a change of ownership of property covered by this general permit, the new owner shall accept and maintain the existing storm water pollution prevention plan or prepare and implement a new storm water pollution prevention plan prior to taking over operations at the site.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II, and be retained on-site at the facility which generates the storm water discharge in accordance with subsection F of this part.

2. The permittee shall make plans available upon request to the director; a state or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system to the municipal operator of the system.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the director, the permittee shall make the required changes to the plan in accordance with the time frames established below and shall submit to the director a written certification that the requested changes have been made.

a. Except as provided in subdivision 3 b of this subsection, the permittee shall have 30 days after

such notification to make the changes necessary.

b. The permittee shall have seven days after such notification to make changes relating to sediment and erosion controls to prevent loss of sediment from the site, unless additional time is provided by the director.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. The plan shall be amended within 30 days of the change or the time when the plan is determined to be ineffective.

D. Contents of plan.

The storm water pollution prevention plan shall include the following items:

1. Site description. Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site prior to construction and after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A description of existing vegetation at the site;

f. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.

g. The name of the receiving water(s) and the ultimate receiving water(s), and areal extent of wetland acreage at the site.

h. A site map indicating: (i) drainage patterns and

approximate slopes anticipated after major grading activities; (ii) areas of soil disturbance; (iii) the location of major structural and nonstructural controls identified in the plan; (iv) the location of areas where stabilization practices are expected to occur including the types of vegetative cover; (v) surface waters (including wetlands); (vi) locations of storm water discharge points to a surface water with an outline of the drainage area for each discharge point; (vii) existing and planned paved areas and buildings; (viii) locations of permanent storm water management practices to be used to control pollutants in storm water after construction activities have been completed; and (ix) locations of other potential pollution sources as described in subdivision f of this subsection.

Two site maps may be developed, one indicating preconstruction site conditions and the second indicating final site conditions. The two maps should be on the same scale.

2. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in the site plan appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. Erosion and sediment controls.

(1) Stabilization practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in subdivision 2 a (1)(a) and (b) of this subsection, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities

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have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity will resume on a portion of the site within 21 days from when activities ceased, (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(2) Structural practices. A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, sediment traps, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment traps, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Post-construction storm water management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the Clean Water Act. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1) Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). A goal of 80% removal of total suspended solids from those flows which exceed predevelopment levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice listed above based on site conditions.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a nonerosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

c. Other controls.

(1) No solid materials, including building materials, garbage, and debris shall be discharged to surface waters of the State, except as authorized by a Section 404 permit.

(2) Off-site vehicle tracking of sediments and the generation of dust shall be minimized. Public or private roadways shall be kept cleared of accumulated sediment. Bulk clearing of accumulated sediment shall not include flushing the areas with water. Cleared sediment shall be returned to the point of likely origin or other suitable location.

(3) The plan shall ensure and demonstrate compliance with applicable state and/or local waste disposal, sanitary sewer or septic system.

regulations.

d. *Approved state or local plans.* Any erosion and sediment control plans or storm water management plans approved by local officials shall be retained with the storm water pollution prevention plan prepared in accordance with this permit. Requirements specified in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by state or local officials that are applicable to protecting surface water resources are, upon submittal of an NOI to be authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit. This provision does not apply to provisions of master plans, comprehensive plans, non-enforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

3. *Maintenance.* A description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan.

4. *Inspections.* Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site and areas used for storage of materials that are exposed to precipitation that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site. These inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that produces surface runoff.

a. *Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system.* Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. *Based on the results of the inspection, the site description identified in the plan in accordance with subdivision 1 of this subsection of this permit and pollution prevention measures identified in the plan in accordance with subdivision 2 of this subsection of this permit shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for*

timely implementation of any changes to the plan within seven calendar days following the inspection.

c. *A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision 4 b of this subsection of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the site is finally stabilized. The report shall be signed in accordance with subsection F of this part of this permit.*

5. *Nonstorm water discharges.* Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision F 2 of Part II of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

E. Contractors.

1. *The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement required in subdivision 2 of this subsection of this permit in accordance with subsection F of this part of this permit. All certifications must be included in the storm water pollution prevention plan.*

2. *All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with subdivision 1 of this subsection of this permit shall sign a copy of the following certification statement before conducting any professional service at the site identified in the storm water pollution prevention plan:*

"I certify under penalty of law that I understand the terms and conditions of this Virginia Pollutant Discharge Elimination System (VPDES) general permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with subsection F of this part of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

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F. Retention of records.

1. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Registration Statement to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the director at any time.

2. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of commencement of construction to the date of final stabilization.

G. Notice of Termination.

1. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the owner of the facility shall submit a Notice of Termination that is signed in accordance with subsection F of Part II to the director.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted.

PART IV. MANAGEMENT REQUIREMENTS.

A. Treatment works operation and quality control.

All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

1. 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.

2. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

3. 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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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 except for any toxic standard imposed under Section 307(a) of 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 other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

G. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to reregister.

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If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

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 director 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the director 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 director 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. 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, if appropriate, in accordance with the Virginia Freedom of Information Act.

M. 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 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;

N. Permit termination.

The owner shall submit a Notice of Termination when a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated.

O. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the VPDES Permit Regulation (VR 680-14-01:1) and in accordance with subsections M, N, and P of this Part IV of this permit.

P. When an individual permit may be required.

The director 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 discharge(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

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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 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 with the terms of this permit.

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 §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

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.

FACT SHEET
ISSUANCE OF A VPDES GENERAL PERMIT FOR

STORM WATER DISCHARGES FROM CONSTRUCTION SITES AUTHORIZATION TO DISCHARGE STORM WATER FROM CONSTRUCTION SITES UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW.

The Virginia Department of Environmental Quality, Water Division has under consideration the issuance of a VPDES general permit for storm water discharges from construction sites.

Permit Number: VAR19xxxx

Name of Permittee: Any owner/operator of a construction site, where construction activities that include clearing, grading and excavating are performed except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development of sale in the Commonwealth of Virginia, agreeing to be regulated under the terms of this General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except designated public water supplies or water where Board Regulations or Policies prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Department of Environmental Quality, Water Division proposes to issue the General Permit subject to certain conditions and has prepared a draft permit. It has been determined that this category is appropriately controlled under a General Permit. The category involves construction sites that disturb five or more acres of land and discharge storm water runoff.

The draft General Permit requires that all covered sites which generate a discharge to surface waters meet standardized monitoring requirements and requirements to develop a site-specific storm water pollution prevention plan.

Proposed Monitoring Requirements

The permittee is required to inspect disturbed areas of the construction site and areas used for storage of materials that are exposed to precipitation that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site. These inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that produces surface runoff. Records of these inspections are to be retained. These inspection requirements are consistent with EPA's general permit for storm water discharges from construction activities.

Minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity were developed by EPA. EPA established that at least an annual inspection be conducted at the site which provides sufficient flexibility to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Several factors were taken into consideration when evaluating this issue. The potential difficulties of collection of storm water samples which include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country and variability in flow rates. The types and concentrations of pollutants in the storm water discharges depend on the nature of the industrial activities occurring at the site, the nature of the precipitation event, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in results collected. Requiring each construction site to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by the state. A significant amount of permitting resources dedicated to reviewing and filing these reports would be necessary.

In establishing the minimum monitoring and reporting requirements for storm water discharges from construction sites, it was determined that frequent and thorough inspections would allow for the identification of areas contributing to a storm water discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Because construction sites can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, measures are implemented for new activities at the site, and existing measures are kept operational. Measures to reduce pollutants in storm water discharges must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is severely limited. Frequent inspection for construction activities are appropriate and necessary for successful program implementation.

This general permit for storm water discharges from construction sites does not contain the traditional numeric or toxicity effluent limitations as conditions. Requirements in this permit include the development of a storm water pollution prevention plan. Discharge sampling information would not provide as direct a link to compliance with this permit condition as it does with numeric limitations. Where permits require the implementation of pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of

pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide a better indication than discharge sampling of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on the construction site. Also, due to the changing nature of the activity at a construction site, monitoring storm water from this type of site would have limited usefulness. The permittee is also required to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the lack of requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to ensure the effective implementation of pollution prevention plans.

Proposed Requirements for the Development of a Storm Water Pollution Plan

The permittee is required to develop a storm water pollution prevention plan. The plan is intended to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site and describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges.

The Clean Water Act requires that all NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements. This permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans and thus, is consistent with the requirements of the CWA. Currently, there is not sufficient data to develop appropriate numeric effluent limitations for storm water discharges from construction sites.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. This adequately addresses the variable storm water management/pollution prevention opportunities available at a construction site. Storm water pollution prevention plans are required to achieve BAT/BCT requirements in lieu of numeric limitations. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in storm water discharges and provide for flexibility for developing tailored plans and strategies. This permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in storm water discharges and are necessary to reflect BAT/BCT. A specific list of traditional storm water controls and sediment and erosion practices are not established because the significant variability in facilities covered by this permit precludes the

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identification of universal standards or practices that are appropriate or can be implemented by all permittees.

The permittee is to consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts. The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and no-water quality environmental impacts.

Other Regulatory Considerations

The General Permit will have a fixed term of five (5) years effective upon Board approval. Every authorization under this General Permit will expire at the same time and all authorizations will be renewed on the same date.

All construction sites that the Director believes are eligible for coverage under this permit will be authorized to discharge under the terms and conditions of this permit after a complete Registration Statement is submitted. If it is determined to be appropriate, the Director will send a copy of the General Permit to the owner/operator. If this General Permit is inappropriate, the owner/operator will be so notified and the requirement that an individual permit is needed will remain in effect. Any facility may request an individual permit by submitting an appropriate application.

All permits will contain the pages of Parts I, II, III and IV.

Title of Regulation: VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Date: June 15, 1993 - 10 a.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(See Calendar of Events section for additional information)

Summary:

The State Water Control Board intends to adopt a general VPDES permit for the nonmetallic mineral mining industrial category. This proposed regulatory action is needed in order to establish appropriate and necessary permitting of discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. This general permit would regulate discharges of process wastewater, mine pit dewatering discharges and storm water discharges from qualified operations in this industrial group.

VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.

§ 1. Definitions

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01:1 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Industrial activity" means the facilities classified as Standard Industrial Classification (SIC) 1411, 1422, 1423, 1429, 1442, 1446, 1459, and 1499 (Office of Management and Budget (OMB) SIC Manual, 1987).

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) that meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the Clean Water Act (CWA) at 40 CFR Part 116.4 (1992); or (c) are pollutants for which the U.S. Environmental Protection Agency (EPA) has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and

waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in the "Industrial Activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs the discharge of mine pit dewatering, process waste water and storm water from active and inactive mineral mines classified as Standard Industrial Classification Codes 1411, 1422, 1423, 1429, 1442, 1446, 1459, and 1499, except as specified below. The following activities shall not have coverage under this general permit: coal mining, metal mining, mineral mines which have asphalt operations located within the mineral mine permit area, mineral mines which obtain their raw materials directly from stream beds by dredging or other means and oil and gas extraction.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (7), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.20 and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the VPDES Permit Regulation (VR 680-14-01:1).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This general permit will become effective on 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 general permit.

§ 6. Authorization to discharge.

Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the Registration Statement of § 7, complies with the effluent limitations and other requirements of § 8, and provided that:

1. Individual permit. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation.
2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to state waters where other board regulations or policies prohibit such discharges.
3. Local government notification. The owner shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.
4. Division of Mineral Mining permit. The owner shall have a mineral mining permit for the operation to be covered by this general permit which has been approved by the Virginia Division of Mineral Mining (or associated waived program, locality or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia.
5. Endangered or threatened species. The board may deny coverage under this general permit to any owner whose discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration Statement and Notice of Termination.

A. The owner shall file a complete general VPDES permit registration statement for nonmetallic mineral mining. Any owner proposing a new discharge shall file

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the registration statement at least 60 days prior to the date planned for commencing construction or operation of the mineral mine. Any owner of an existing mineral mine covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 120 days prior to the expiration date of the individual VPDES permit. Any owner of an existing mineral mine not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT
NONMETALLIC MINERAL MINING

1. Name of Applicant:
. (please print or type)
2. Mailing Address:
3. Telephone Number:
4. Fax Number:
5. Project Name:
6. Description of Mining Activity (Mineral Mined): . . .
. . .
7. County:
8. Location:
9. Name of Stream Receiving Discharge (i.e. Clear Creek or unnamed Tributary to Clear Creek)
10. Does this mine currently have a VPDES permit?
Yes . . . No . . .
If yes, give permit number
11. Description of waste water treatment and/or reuse/recycle system(s):
12. List any chemicals added to water that could be discharged:
13. Attach to this registration statement a schematic drawing showing the source(s) of water used on the property, the industrial operations contributing to, or using water, and the conceptual design of the methods of treatment and disposal of waste water and solids.
14. Attach to this registration statement an aerial photo or scale map which clearly shows the property

boundaries, plant site, location of any mine dewatering or process waste water discharge and the receiving stream.

15. The owner of any proposed discharge into or adjacent to state waters or the owner of any discharge into or adjacent to state waters which has not previously been covered by a valid VPDES permit must attach to this registration statement notification from the governing 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.

16. Primary Standard Industrial Classification (SIC) Code: Secondary SIC Codes:

17. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals? . . .

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.

Signature(s): Date:

. Date:

Name of person(s) signing above:

(printed or typed)

(printed or typed)

Title(s):

.....
For Water Control Board use only:

Accepted/Not Accepted by: Date:

Basin Stream Class Section

Special Standards

Proposed Regulations

Required Attachments:

1. Approved Mining Permit
2. Local Government Ordinance Form
3. Water Use Schematic Drawing
4. Aerial Photo or Map

B. Notice of Termination

Coverage under this general permit may be terminated by the owner by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of discharges associated with industrial activity at a facility changes, when the mineral mining permit approved by the Division of Mineral Mining (or associated waived program) expires following mine close out and final bond release or where all discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

**VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR
NONMETALLIC MINERAL MINING**

1. General VPDES Nonmetallic Mineral Mining Permit Number:
2. Check here if you are no longer the owner of the facility:
3. Check here if the discharges associated with industrial activity have been eliminated:
4. Check here if the mineral mining permit approved by the Division of Mineral Mining (or associated waived program) has expired following mine close out and final bond release:
5. Check here if all discharges associated with industrial activity have been covered by an individual VPDES permit:
6. Facility Owner
Name:
Mailing Address:
City: State: Zip Code:
Phone:
7. Facility Location

Name:

Address:

City: State: Zip Code:

8. Certification:

"I certify under penalty of law that all discharges associated with industrial activity from the identified facility that are authorized by this general VPDES permit have been eliminated, that I am no longer the owner of the industrial activity, that the mineral mining permit approved by the Division of Mineral Mining (or associated waived program) has expired following mine close out and final bond release, or that all discharges associated with industrial activity have been covered by an individual VPDES permit. I understand that by submitting this notice of termination, that I am no longer authorized to discharge in accordance with the general permit, and that discharging pollutants to surface waters of the state is unlawful under the Clean Water Act and the State Water Control Law where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner from liability for any violations of this permit under the Clean Water Act or the State Water Control Law."

Signature(s): Date:

. Date:

Name of person(s) signing above:

(printed or typed)

(printed or typed)

Title(s):

§ 8. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation.

General Permit No.: VAG84

Effective Date:

Expiration Date:

**GENERAL PERMIT FOR NONMETALLIC MINERAL
MINING
AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE
ELIMINATION SYSTEM AND THE VIRGINIA
STATE WATER CONTROL LAW**

Proposed Regulations

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 nonmetallic mineral mines 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.

This general permit covers all owners or operators of point source discharges associated with activities within Standard Industrial Classifications 1411, 1422, 1423, 1429, 1442, 1446, 1459, 1499 except as specified below. Coverage includes active or inactive mineral mines that discharge: (i) storm water associated with industrial activity; (ii) mine pit dewatering; or (iii) process waste waters. Covered operations shall have a mineral mining permit approved by the Virginia Division of Mineral Mining (or associated waived program, locality or state agency) under the provisions and requirements of Title 45.1 of the Code of Virginia. The following activities shall not have coverage under this general permit: coal mining, metal mining, mineral mines which have asphalt operations located within the mineral mine permit area, mineral mines which obtain their raw materials directly from stream beds by dredging or other means and oil and gas extraction.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, Part III - Storm Water Pollution Prevention Plans, and Part IV - Management Requirements, as set forth herein.

PART I. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Effluent limitations and monitoring requirements.

1. During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge process waste water, storm water and effluent from mine pit dewatering. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): at the point of discharge, prior to entering state waters.

Such discharges shall be limited and monitored by the permittee as specified below:

<u>Effluent Characteristics</u>	<u>Discharge Limitations</u>			<u>Monitoring Requirements</u>	
	<u>Average</u>	<u>Maximum</u>	<u>Minimum</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow (MGD)</u>	NL	NL	NL	<u>1/3 Months</u>	<u>Estimate</u>
<u>Total Suspended Solids</u>	<u>30 mg/l</u>	<u>60 mg/l</u>	NA	<u>1/3 Months</u>	<u>Grab</u>
<u>pH (standard units)</u>	NA	<u>9.0*</u>	<u>6.0*</u>	<u>1/3 Months</u>	<u>Grab</u>

NL = No Limitation, monitoring required

NA = Not applicable

2. Use of any additive chemical will require the discharger to obtain prior written approval from the State Water Control Board.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Where the Water Quality Standards (VR 680-21-08) establish alternate standards for pH, those standards shall be the maximum and minimum effluent limitations.

Proposed Regulations

4. 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 point sources, storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as "Section 313 water priority chemicals" where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)*	NA	NL	2/year	Estimate
Oil and Grease	NA	NL	2/year	Grab
BOD ₅	NA	NL	2/year	Grab/Composite**
Chemical Oxygen Demand	NA	NL	2/year	Grab/Composite**
Total Suspended Solids	NA	NL	2/year	Grab/Composite**
Total Kjeldahl Nitrogen	NA	NL	2/year	Grab/Composite**
Total Phosphorus	NA	NL	2/year	Grab/Composite**
pH (standard units)	NL	NL	2/year	Grab
Acute whole effluent toxicity	NA	NL	2/year	Grab
Section 313 water priority chemicals***	NA	NL	2/year	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

5. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and where there is the potential for these chemicals to mix with storm water discharges.

B. Special conditions.

1. Vehicles and equipment utilized during the mining activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

2. No sewage shall be discharged from this mineral mining activity except under the provisions of another VPDES permit specifically issued therefore.

3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval is granted by the State Water Control Board.

4. The permittee shall submit a Notice of Termination to the director, that is signed in accordance with subsection G of Part II. The Notice of Termination shall be filed in situations where all discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of discharges associated with industrial activity at a facility changes, when the mineral mining permit approved by the Division of Mineral Mining (or associated waived program) expires following mine close out and final bond release or where all discharges associated with industrial activity have been covered by an individual VPDES permit. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director.

5. The permittee shall submit a new registration statement if the outfall location or the characteristics of a discharge covered by this general permit are altered. The new registration statement shall be filed with the board's regional office within 30 days of the outfall relocation or change in the characteristics of the discharge.

6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C), (D), and (E), 304 (b) (2) (3) (4), and 307 (a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the

permit; or

b. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the act then applicable.

7. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

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 (i) this permit, (ii) Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 C.F.R. Part 136 (1992)) or (iii) other methods approved by the board.

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 ensure 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;

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6. The results of such analyses and measurements;
7. The date and duration (in hours) of each storm event(s) sampled;
8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and
9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be made a part of the pollution prevention plan and shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.

F. Reporting requirements.

1. The permittee shall submit original monitoring reports of each quarter's performance to the State Water Control Board regional office once per year, on

or before the 10th of January.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the board with the monitoring report at least the following information:

- a. A description and cause of noncompliance;
- b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and
- c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in subdivisions 2a through 2c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this subdivision.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the regional office cannot be reached, the board maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made.

G. 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 subdivisions 1 a, b, or c of this subsection; 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 subdivisions 1 a, b, or c of this subsection; 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

subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain with the other records and information resulting from monitoring activities as required under subsection C of Part II, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a two-year period. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more exclusively storm water outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the storm water monitoring requirements of subdivision A 4 of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of

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law, signed in accordance with subsection G of Part II (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made a part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the storm water monitoring requirements of subdivision A 4 of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in subdivision A 4 of Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR Part 122 (1992) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameters identified in subsection A of Part I.

L. Toxicity testing.

Permittees that are required to monitor storm water discharges for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. *Test procedures.* The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected on or after October 1, 1996, in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. *Spills.* This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

PART III.

STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the

effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the effective date of this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to subdivision D 7 of this part (EPCRA Section 313) shall provide for compliance with the terms of the requirements identified in subdivision D 7 of this part as expeditiously as practicable, but not later than three years after the date of coverage under this general permit. Facilities which are not required to report under EPCRA Section 313 prior to July 1, 1993, shall provide for compliance with the terms of the requirements identified in subdivision D 7 of this part as expeditiously as practicable, but not later than three years after the date on which the facility is first required to report under EPCRA Section 313. However, plans for facilities subject to the additional requirements of subdivision D 7 of this part shall provide for compliance with the other terms and conditions of this permit in accordance with the appropriate dates provided in subdivision A 1 or A 2 of this part of this permit.

4. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a Registration Statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with subsection C of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, or authorized representative.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those

provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director (or as otherwise provided by the director) or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the State or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. *Pollution prevention team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. *Description of potential pollutant sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to

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precipitation, locations where major spills or leaks identified under subdivision D 2 c of this part (spills and leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following

activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site compliance evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. *Employee training.* Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. *Recordkeeping and internal reporting procedures.* A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. *Sediment and erosion control.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. *Management of runoff.* The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 of this part (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. *Comprehensive site compliance evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

a. *Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for,*

pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. *Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 of this part (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 of this part (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.*

c. *A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4b of this part of this permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.*

5. *Consistency with other plans.* Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the Clean Water Act or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

6. *Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to Know Act (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other*

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applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 6 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority

chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 6 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by subdivision D 6 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is

practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas, in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 6 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivision D 6 b (1), (2), (3) or (4) of this part), from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to surface waters of the state, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or

intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges, shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. A Registered Professional Engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

PART IV. 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 registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities

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or processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.

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 to the board a registration statement 60 days prior to all expansions, production increases, or process modifications, that will result in the discharge or management of 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.

3. The permittee shall promptly provide written notice to the board of the following:

a. Any new introduction of pollutant(s), into treatment works or pollutant management activities which represents a significant increase in the discharge or management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment, treatment works, or discharge(s), if such establishment, treatment works, or discharge(s) were discharging or has the potential to discharge pollutants to state waters.

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, pollutant management activities, or discharge(s) that was introducing pollutants into such treatment works at the time of issuance of the permit.

c. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for the pollutant in the registration statement; or

(4) The level established in accordance with regulation under Section 307(a) of the Act and accepted by the board.

d. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the registration statement;

(4) The level established by the board.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the board.

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 filed with the State Water Control Board and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the board. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design 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. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. 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 unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the board promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe

property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if a bypass occurs during normal periods of equipment downtime, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the board as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision F 1 of this part and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset.

A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by subsection F of Part II; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. 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 except for any toxic standard imposed under Section 307(a) of 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.

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I. 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.

J. Severability.

The provisions of this permit are severable.

K. Duty to reregister.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. Right of entry.

The permittee shall allow, or secure necessary authority to 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.

M. 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 to the board 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.

N. 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, unless the information has been identified by the applicant as a trade secret, of which the effluent data remain open public information. All information claimed confidential must be identified as such at the time of submission to the board or EPA. Otherwise, all information will be made available to the public in accordance with the Virginia Freedom of Information Act. Notwithstanding the foregoing, any supplemental information that the board may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

O. 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 (U.S.C 33 1251 et seq); or
3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

- Q. When an individual permit may be required.

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The board may require any permittee 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 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 permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. 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.

S. Civil and criminal liability.

Except as provided in permit conditions on "bypassing" (subsection F of this part), and "upset" (subsection G of this part) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. 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 680-14-21. Virginia Pollution Abatement (VPA) Permit Regulation.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:

June 15, 1993 - 2 p.m.

June 21, 1993 - 3 p.m.

June 22, 1993 - 3 p.m.

June 23, 1993 - 1:30 p.m.

June 23, 1993 - 7:30 p.m.

June 30, 1993 - 2 p.m.

Written comments may be submitted until 4 p.m. on July 19, 1993.

(See Calendar of Events section for additional information)

Summary:

In 1988 the State Water Control Board (SWCB) adopted the Permit Regulation, VR 680-14-01. That regulation governs both the Virginia Pollutant Discharge Elimination System (VPDES) permits and the Virginia Pollution Abatement (VPA) permits. The SWCB now proposes to adopt separate regulations for the VPDES and VPA permit programs and to repeal the current Permit Regulation (VR 680-14-01). The VPA permit program is being separated from the Permit Regulation in order to recognize the distinction between this wholly state run permit program and the federal/state NPDES/VPDES permit program. Any pollutant management activity which does not result in a point source discharge to surface waters may be required to obtain a VPA permit in order to ensure that the activity does not alter the physical, chemical or biological properties of state waters. VPA permits may be utilized to authorize the land application of sewage, sludge, animal waste or industrial waste or the complete reuse and recycle of wastewater. The VPA Permit Regulation will delineate the procedures and requirements to be followed in connection with VPA permits issued by the SWCB

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pursuant to the State Water Control Law.

PART I. GENERAL.

§ 1.1. Definitions.

The following words and terms, when used in this regulation and in VPA permits issued under this regulation, shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

“Best Management Practices (BMP)” means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent, or reduce, the pollution of state waters. BMP’s include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

“Board” means the Virginia State Water Control Board or State Water Control Board.

“Bypass” means intentional diversion of waste streams from any portion of a treatment works.

“Director” means the Director of the Department of Environmental Quality.

“Discharge” means, when used without qualification, a discharge of a pollutant or any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

“Draft VPA permit” means a prepared document indicating the director’s tentative decision relative to a VPA permit action.

“General VPA permit” means a VPA permit issued by the director authorizing a category of discharges within a geographic area.

“Land application” means the introduction of wastewaters or sludge into or onto the ground for treatment or reuse.

“Limitation” means any restriction imposed by the director on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

“Monitoring report” means forms supplied by the director for use in reporting of self-monitoring results of the permittee.

“Municipality” means a city, county, town, district association, authority or other public body created under

the law and having jurisdiction over disposal of sewage, industrial, or other wastes.

“Nonpoint source” means a source of pollution, such as a farm or forest land runoff, urban storm water runoff, mine runoff, or salt water intrusion that is not collected or discharged as a point source.

“Operator” means any individual employed or appointed by any owner, who is designated by such owner to be the person in responsible charge, such as a supervisor, shift operator, or substitute in charge, whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

“Overflow” means the unintentional discharge of wastes from any portion of a treatment works.

“Permittee” means an owner or operator who has a currently effective VPA permit issued by the director.

“Point source” means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

“Pollutant” means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean sewage from vessels; or water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the director determines that such injection or disposal will result in the degradation of ground or surface water resources.

“Pollutant management activity” means a treatment works with a potential or actual discharge to state waters which does not have a point source discharge to surface waters.

“Privately owned treatment works (PVOTW)” means any sewage treatment works not publicly owned.

“Publicly owned treatment works (POTW)” means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

“Public hearing” means a fact-finding proceeding held to

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afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with statutory requirements and board regulations, standards and policies.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as inter/intrastate lakes, rivers, streams sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the Clean Water Act, 33 U.S.C 1251 et seq., which after discharge will, on the basis of available information, cause toxicity. Toxicity means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic

life, detrimental effects on human health or other adverse environmental effects.

"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations or unit treatment processes).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation or both of sewage or liquid industrial waste, or other waste necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Twenty-five year, 24-hour rainfall event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the director, pursuant to this regulation, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the director pursuant to VR 680-14-01:1, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"VPA application" means the standard form or forms approved by the director for applying for a VPA permit.

§ 1.2. Purpose.

This regulation delineates the procedures and requirements to be followed in connection with VPA permits issued by the director pursuant to the State Water Control Law.

§ 1.3. Authority for regulations.

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The authority for this regulation is pursuant to subdivisions (7), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18, 62.1-44.19, 62.1-44.20, and 62.1-44.21 of the Code of Virginia.

§ 1.4. Prohibitions and requirements for VPA permits.

A. All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to state waters except in the case of a 25-year, 24-hour or greater storm event.

B. 1. Except in compliance with a VPA permit, or another permit, issued by the director, it shall be unlawful for any person to:

a. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

b. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental (i) to the public health, (ii) to animal or aquatic life, (iii) to the use of such waters for domestic or industrial consumption, (iv) for recreation, or (v) for other uses.

2. In the event a discharge not authorized by permit should occur which may adversely affect state waters or may endanger public health, the owner shall make an oral report of the discharge to the director immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner to the director within five days of discovery of the discharge.

a. The written report shall contain:

- (1) A description of the nature of the discharge;
- (2) The cause of the discharge;
- (3) The date on which the discharge occurred;
- (4) The length of time that the discharge continued;
- (5) The volume of the discharge;
- (6) If the discharge is continuing, how long it is expected to continue;
- (7) If the discharge is continuing, what the expected total volume of the discharge will be; and
- (8) Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

b. Discharges reportable to the director under the

immediate reporting requirements of other regulations are exempted from this requirement.

C. VPA permits may be utilized to authorize pollutant management activities including, but not limited to, storage or land application of sewage, sludge, industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source discharges of pollutants to surface waters may be authorized by a VPDES permit (see VR 680-14-01:1, VPDES Permit Regulation).

D. No VPA permit shall be issued in the following circumstances:

1. Where the terms or conditions of the VPA permit do not comply with the applicable regulations or requirements of the State Water Control Law;

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into state waters; or

3. For any pollutant management activity that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the director pursuant to the law.

§ 1.5. Exclusions.

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect discharges. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all dischargers of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality or other person not leading to treatment works;

2. Any introduction of pollutants from nonpoint source agricultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated or intensified animal feeding operations;

3. Return flows from irrigated agricultural land;

4. Land disposal activity including septic tanks when authorized by a State Department of Health permit or a State Department of Waste Management Permit; and

5. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC) and approved, in writing, by the

director.

§ 1.6. Effect of a VPA permit.

A. Compliance with a VPA permit constitutes compliance with the VPA permit requirements of the State Water Control Law.

B. The issuance of a VPA 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 or any infringement of federal, state or local law or regulation.

PART II. PERMIT APPLICATION AND ISSUANCE.

§ 2.1. Application for a VPA permit; duty to apply; duty to reapply.

A. Any person who manages or proposes to manage pollutants under a VPA permit and who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under § 1.5 of this regulation, shall submit a complete application to the director in accordance with this section.

1. A complete VPA permit application shall be submitted by an owner who manages or proposes to manage the handling of pollutants before a VPA permit can be issued. This requirement does not apply where general VPA permits are applicable.

Where the application is incomplete the director may require the submission of additional information after an application has been filed and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the director considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the director, he shall promptly submit such facts or the correct information.

2. Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 120 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of facilities prior to the issuance of a VPA permit.

Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the director. The director, after determining there is pollution occurring, may consider allowing the construction only of treatment works prior to permit issuance. There shall be no operation of any facilities

prior to permit issuance.

3. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPA permit will be deemed complete until the director receives notification from the governing body of the county, city or town in which the pollutant management activity is to take place that the location and operation of the pollutant management 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. If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed 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, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this regulation.

4. No application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the director with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

B. Any permittee with an effective VPA permit shall submit a new application at least 120 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the director. The director will not grant permission to submit an application later than the expiration date of the existing VPA permit.

Owners currently managing pollutants who have effective VPA permits shall submit a new application 120 days prior to proposed facility expansions, production increases, or process modification which will:

1. Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity; or

2. Violate or lead to violation of the terms and conditions of the effective VPA permit.

C. All applicants for VPA permits shall provide information in accordance with forms provided by the director.

§ 2.2. Signatory requirements.

Any application, report, including monitoring reports, or certifications shall be signed as follows:

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1. Application.

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 million (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 VPA permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 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 subdivision 1 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.

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 director prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 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."

§ 2.3. Conditions applicable to all VPA permits.

Every VPA permit issued by the director shall contain the following conditions.

1. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the State Water Control Law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

2. Duty to halt or reduce activity. 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 VPA permit.

3. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct or prevent any pollutant management activity in violation of this VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with permit conditions. Proper operation and maintenance includes effective plant performance, adequate funding, adequate licensed operator staffing, an adequate laboratory and process control, including appropriate quality assurance procedures.

5. Permit action.

a. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this regulation.

b. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted

upon by the director. This provision shall not be used to extend the expiration date of the effective VPA permit.

c. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested persons, or upon the director's initiative, to reflect the requirements of any changes in the statutes or regulations.

d. VPA permits continued under § 2.8 of this regulation remain effective and enforceable.

6. *Inspection and entry.* Upon presentation of credentials, any duly authorized agent of the director may, at reasonable times and under reasonable circumstances:

a. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;

b. Have access to, inspect and copy any records that must be kept as part of VPA permit conditions;

c. Inspect any facility's equipment, including monitoring and control equipment, practices or operations regulated or required under the VPA permit; and

d. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

7. *Duty to provide information.*

a. The permittee shall furnish to the director, within a reasonable time, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by the permittee.

b. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the director prior to commencing construction.

8. *Monitoring and records.*

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. The permittee shall retain records of all monitoring information, including all calibration and

maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the director at any time.

c. Records of monitoring information shall include:

(1) The date, exact place and time of sampling or measurements;

(2) The name of the individual or individuals who performed the sampling or measurements;

(3) The date or dates analyses were performed;

(4) The name of the individual or individuals who performed the analyses;

(5) The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and

(6) The results of such analyses.

d. Monitoring shall be conducted according to analytical methods promulgated pursuant to §304(h) of the Clean Water Act (33 U.S.C. 1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 (1992). Any other test procedure not listed in 40 CFR Part 136 (1992) shall be specified in the VPA permit as approved by the director.

9. *Reporting requirements.*

a. The permittee shall give prompt notice to the director of any planned changes to the design or operation of the pollutant management activity.

b. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the director by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the director within five days of discovery of the discharge in accordance with subdivision 9 f of this section. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

(1) Unusual spillage of materials resulting directly or

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indirectly from processing operations;

- (2) Breakdown of processing or accessory equipment;
- (3) Failure or taking out of service of some or all of the treatment works; and
- (4) Flooding or other acts of nature.

c. The permittee shall give at least 10 days advance notice to the director of any planned changes to the facility or activity which may result in noncompliance.

d. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.

- (1) Monitoring results shall be reported in a format acceptable to the director.
 - (2) If a permittee monitors the pollutant management activity for any pollutant more frequently than required by the VPA permit using approved analytical methods, he shall report the results of this monitoring on the monitoring report.
 - (3) If the permittee monitors the pollutant management activity for any pollutant that is not required to be monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.
 - (4) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.
- (e) Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.
- (f) The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health. An oral report must be provided as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate and prevent a recurrence of the noncompliance. The director may waive the written report requirements on a case by case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely

effect state waters shall be submitted with the monitoring report. Reports shall include overflows.

The following shall be included as information which must be reported within 24 hours under this paragraph:

- (1) Any unanticipated bypass; and
- (2) Any upset which causes a discharge to surface waters.

10. Bypass.

a. A bypass of the treatment works is prohibited except as provided herein.

b. If the permittee knows in advance of the need for a bypass, he shall notify the director promptly at least 10 days prior to the bypass. After considering its adverse effects the director may approve an anticipated bypass if:

(1) The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production; and

(2) There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

(3) If an unplanned bypass occurs, the permittee shall notify the director as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 10 b of this section and in light of the information reasonably available to the owner at the time of the bypass.

11. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance.

In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence

of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

a. That an upset occurred and that the cause can be identified;

b. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

c. That the 24-hour reporting requirements to the director were met; and

d. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

12. *Signature requirements.* All applications, reports, or information submitted to the director shall be signed and certified as required in § 2.2.

13. *Transfers.* This VPA permit is not transferable to any person except after notice to the director, according to § 5.4. The director may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

§ 2.4. *Conditions applicable to publicly or privately owned sewage treatment works.*

Publicly or privately owned sewage treatment works shall provide adequate notice to the director of the following:

1. Any new introduction of pollutants into a privately or publicly owned sewage treatment works from an indirect discharger which would be subject to limitations and standards for the pollutant management activity; and

2. Any substantial change in quantity or quality of pollutants being introduced into the privately or publicly owned sewage treatment works and any anticipated impact the change may have on such treatment works.

§ 2.5. *Establishing limitations and other VPA permit conditions.*

In addition to the conditions established in §§ 2.3 and 2.4, each VPA permit shall include conditions meeting the following requirements where applicable:

1. *Determination of limitations.* The director shall establish VPA permit limitations and conditions based on the nature of the pollutant management activity in

order to ensure compliance with technology-based limitations, water quality standards, the State Water Control Law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to: duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, BMPs and schedules of compliance.

2. *Duration of VPA permits.* VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit, except that the VPA permits for concentrated animal feeding operations shall not exceed five years. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by these regulations and the director is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

3. *Monitoring requirements.*

a. All VPA permits may specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring; and

(3) Applicable reporting requirements based upon the impact of the regulated activity on water quality.

b. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

c. In addition, the following monitoring requirements may be included in the VPA permits:

(1) Mass or other measurements specified in the VPA permit for each pollutant of concern;

(2) The volume of waste, wastewater or sludge managed by the activity; and

(3) Other measurements as appropriate.

4. *Best Management Practices (BMPs).* Where numeric

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limits are infeasible, or where BMPs are necessary to achieve limitations and standards or to carry out the purposes and intent of the Law, the VPA permit may require the use of BMPs to control or abate the management of pollutants.

5. *Sludge disposal.* The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

6. *Schedules of compliance.* The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

a. Schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;

b. The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and

c. Schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, or material shortage).

§ 2.6. Draft VPA permit formulations.

A. Upon receipt of a complete application, the director shall make a decision to tentatively issue the VPA permit or deny the application. If a tentative decision is to issue the VPA permit then a draft VPA permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VPA permit:

1. Conditions, limitations, standards and other requirements applicable to the VPA permit;

2. Compliance schedules where applicable; and

3. Monitoring requirements.

B. If the tentative decision is to deny the application, the director shall so advise the owner of that decision and the requirements necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or conditions satisfied for the tentative approval to issue, the director shall provide public notice and opportunity for a public hearing prior to formal board action on the application.

C. This section does not apply where a general VPA permit is applicable.

§ 2.7. Fact sheet.

A. The director shall prepare a fact sheet to accompany all draft VPA permits. These fact sheets shall be made available to the public upon request.

B. The fact sheet shall include:

1. A brief description of the pollutant management activity to be permitted;

2. An explanation of the statutory provisions on which the VPA permit requirements are based;

3. Calculations or other necessary explanations of the derivation of the VPA permit conditions or limitations;

4. The location of each pollutant management activity;

5. The reasons for any requested modifications;

6. A description of the procedures and sequence of events for reaching the final decision; and

7. The name and telephone number of a person to contact for additional information.

§ 2.8. Continuation of expiring VPA permits.

A. Expiring VPA permits are automatically continued pending issuance of a new VPA permit if:

1. The permittee has submitted a timely and complete application as required by these regulations, unless the director has given permission for a later submittal, which shall not extend beyond the expiration date of the original VPA permit; and

2. The director is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

B. Continued VPA permits remain effective and enforceable against the permittee.

PART III. PUBLIC INVOLVEMENT.

§ 3.1. Public notice of VPA permit action and public comment period.

A. Every draft VPA permit shall be given public notice paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity.

B. The director shall allow a period of at least 30 days following the date of the initial public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a VPA permit shall include:

1. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity;
2. A brief description of the business or activity conducted at the facility;
3. A statement of the tentative determination to issue or deny a VPA permit;
4. A brief description of the final determination procedure;
5. The address and phone number of a specific person at the state office from whom further information may be obtained; and
6. A brief description on how to submit comments and request a hearing.

D. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

§ 3.2. Public access to information.

Pursuant to § 62.1-44.21 of the Code of Virginia, all information pertaining to VPA permit processing or in reference to any source of any pollutant, shall be available to the public, unless the information has been identified by the applicant as a trade secret. In any case, the VPA permit and the VPA permit application remain public information. All information claimed confidential must be identified as such at the time of submission to the director. Otherwise, all information will be made available to the public. Notwithstanding the foregoing, any supplemental information that the director may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

§ 3.3. Conditions requested by other government agencies.

If during the comment period any other state agency with jurisdiction over fish, wildlife, or public health advises the director in writing that the imposition of specified conditions upon the VPA permit is necessary to avoid substantial impairment of human health or of fish, shellfish, or wildlife resources, the director shall consider the inclusion of the specified conditions in the VPA permit. If any conditions requested are not included in the VPA permit the director shall notify the agency of the reasons for not including the conditions.

§ 3.4. Public comments and hearings.

A. A comment period of at least 30 days following the initial date of public notice of the formulation of a draft VPA permit shall be provided. During this period any interested persons may submit written comments on the draft VPA permit and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised pursuant to the board's Procedural Rule No. 1 or its successor. All comments shall be considered by the director in preparing the final VPA permit and shall be responded to in writing.

B. The board shall hold a public hearing where there is a significant degree of public interest relevant to a draft VPA permit. The board may hold a public hearing in any case. Public notice of that hearing shall be given as specified in § 3.5. Nothing in this paragraph shall relieve the board of the requirement to hold a hearing where a hearing is required by applicable law or regulation.

C. Any hearing convened pursuant to this section will be held in the geographical area of the proposed pollutant management activity, or in another appropriate area. Related groups of VPA permit applications may be considered at any such hearing.

D. If changes are made to the VPA permit based on public comments, the permittee and all persons who commented will be notified of the changes, but no further public notice is required.

E. Any owner aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

F. Proceedings at, and the decision from, the public hearing will be governed by the board's Procedural Rule No. 1 or its successor.

§ 3.5. Public notice of hearing.

A. Public notice of any hearing held pursuant to § 3.4 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the pollutant management activity is to occur; and

2. Notice shall be sent to all persons and government agencies which received a copy of the notice of the VPA permit application.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 of this section at least 30 days in advance of the hearing.

C. The content of the public notice of any hearing held pursuant to § 3.4 shall include at least the following:

1. Name and address of each owner whose

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application will be considered at the hearing and a brief description of the owner's pollutant management activities or operations;

2. A brief reference to the public notice issued for the VPA permit application, including identification number and date of issuance unless the public notice includes the hearing notice;

3. Information regarding the time and location for the hearing;

4. The purpose of the hearing;

5. A concise statement of the issues raised by the persons requesting the hearing;

6. The name of a contact person and the address at which interested persons may obtain further information, request a copy of the draft VPA permit prepared pursuant to § 2.6, request a copy of the fact sheet prepared pursuant to § 2.7 and inspect or arrange for receipt of copies of forms and related documents; and

7. A brief reference to the rules and procedures to be followed at the hearing.

PART IV. SPECIAL PERMIT REQUIREMENTS.

§ 4.1. Treatment plant loadings approaching capacity.

A. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPA permit for each month of any three consecutive month period, the owner shall within 30 days notify the director in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the VPA permit.

B. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could reasonably be anticipated, resulting from high influent flows.

C. Upon receipt of the owner's plan of action, the director shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

D. Failure to timely submit an adequate plan shall be deemed a violation of the VPA permit.

E. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

§ 4.2. Operator requirements.

A. The permittee shall employ or contract at least one operator who holds a current wastewater license appropriate for the permitted facility, if required by the VPA permit. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators. Notwithstanding the foregoing requirement, unless the pollutant management activity is determined by the director on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;

2. That discharge industrial waste or other waste from coal mining operations; or

3. That do not utilize biological or physical/chemical treatment.

B. In making this case-by-case determination, the director shall consider the location of the pollutant management activity with respect to state waters, the size of the pollutant management activity, the quantity and nature of pollutants reaching state waters and the treatment methods used at the treatment works.

C. The permittee shall notify the director in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subsection A of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

PART V. PERMIT MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION.

§ 5.1. Modification, revocation and reissuance, and termination.

VPA permits shall be modified, revoked and reissued, or terminated only as authorized by this section.

A VPA permit may be modified in whole or in part, revoked and reissued or terminated.

VPA permit modifications shall not be used to extend the term of a VPA permit.

Modification, revocation and reissuance, or termination of VPA permit may be initiated by the director, interested persons, or permittee under applicable provisions of this regulation.

The director may require an updated VPA permit application in order to modify or revoke and reissue a VPA permit.

§ 5.2. Causes for termination.

A. The following are causes for terminating a VPA permit during its term, or for denying a VPA permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation or order of the board, any condition of a VPA permit, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which in the opinion of the board, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a VPA permit, or in any other report or document required under the State Water Control Law or these regulations;

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by VPA permit modification or termination; or

4. There exists a material change in the basis on which the VPA permit was issued that requires either a temporary or a permanent reduction or elimination of any pollutant management activity controlled by the VPA permit necessary to protect human health or the environment.

B. A VPA permit may be terminated without public notice and opportunity for a hearing when the termination is mutually agreed to by the permittee and the director.

§ 5.3. Causes for modification.

A VPA permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility which require the application of VPA permit conditions that differ from those of the existing VPA permit or are absent from it;

2. When new information becomes available about the operation or pollutant management activity covered by the VPA permit which was not available at VPA permit issuance and would have justified the application of different VPA permit conditions at the time of VPA permit issuance;

3. When a change is made in the promulgated

standards or regulations on which the VPA permit was based;

4. When it becomes necessary to change final dates in compliance schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc.;

5. When changes occur which are subject to "Reopener Clauses" in the VPA permit;

6. When the permittee begins or expects to begin to use or manufacture any toxic pollutant not reported in the application; or

7. When other states were not notified of the change in the VPA permit and their waters may be affected by the pollutant management activity.

§ 5.4. Transfer of VPA permits; transfer by modification; automatic transfer.

A. Except as provided for under automatic transfer, in subsection B of this section, a VPA permit shall be transferred only if the VPA permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Any VPA permit shall be automatically transferred to a new owner if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of VPA permit responsibility, coverage and liability between them; and

3. The director 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 VPA permit.

§ 5.5. Minor modification.

A. Upon request of the permittee, or upon director initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a frequency other than that required in the VPA permit;

3. Change an interim compliance date in a schedule

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of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in ownership or operational control when the director determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the director;

5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;

6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;

7. Change plans and specifications where no other changes in the VPA permit are required;

8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or

9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

PART VI. SPECIAL PROGRAMS.

§ 6.1. Animal feeding operations.

A. Concentrated and intensified animal feeding operations are subject to the VPA permit program. Two or more animal feeding operations under common ownership are considered, for the purposes of this regulation to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. The following words and terms, when used in this part, shall have the meanings defined in this subsection:

"Animal feeding operation" means a lot or facility together with any associated treatment works where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and
2. Crops, vegetation forage growth, or post harvest

residues are not sustained over any portion of the operation of the lot or facility.

"Concentrated animal feeding operation" means an animal feeding operation where:

1. More than the following number and types of animals are confined:

- a. 1,000 slaughter and feeder cattle;
- b. 700 mature dairy cattle (whether milked or dry cows);
- c. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 500 horses;
- e. 10,000 sheep or lambs;
- f. 55,000 turkeys;
- g. 100,000 laying hens or broilers; or
- h. 1,000 animal units.

2. Treatment works are required to store wastewater or otherwise prevent a point source discharge of wastewater pollutants to state waters from the animal feeding operation except in the case of a 25-year 24-hour or greater storm event.

"Intensified animal feeding operation" means an animal feeding operation which:

1. Is less than or equal to 1,000 animal units but more than the following number and type of animals are confined:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers; or
- h. 300 animal units.

2. Treatment works are required to store wastewater, or otherwise prevent a point source discharge of wastewater pollutants to state waters from the anima

feeding operation except in the case of a 25-year 24-hour or greater storm event.

C. The director may designate any animal feeding operation which does not fall under the definitions of subsection B of this section as a concentrated or intensified animal feeding operation upon determining that it is a potential or actual contributor of pollution to state waters. In making this designation the director shall consider the following factors:

1. The size of the operation;
2. The location of the operation relative to state waters;
3. The means of conveyance of animal wastes and process waters into state waters;
4. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;
5. The means of storage, treatment, or disposal of animal wastes; and
6. Other relevant factors

A VPA permit application shall not be required for a concentrated or intensified animal feeding operation designated under this subsection until the director has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

§ 6.2. General VPA permits.

The director may issue a general VPA permit in accordance with the following:

1. Sources. A general VPA permit may be written to regulate a category of pollutant management activities within a geographic area that:
 - a. Involve the same or similar types of operations;
 - b. Manage the same or similar types of wastes;
 - c. Require the same VPA permit limitations or operating conditions;
 - d. Require the same or similar monitoring; and
 - e. In the opinion of the director, are more appropriately controlled under a general VPA permit than under individual VPA permits.
2. Administration.
 - a. General VPA permits will be issued, modified,

revoked and reissued, or terminated pursuant to the law and the board's Public Participation Guidelines.

b. The director may require any person operating under a general VPA permit to apply for and obtain an individual VPA permit. Interested persons may petition the director to take action under this subdivision. Cases where an individual VPA permit may be required include the following:

- (1) Where the pollutant management activity is a significant contributor of pollution;
- (2) Where the owner is not in compliance with the conditions of the general VPA permit;
- (3) When a water quality management plan containing requirements applicable to such sources is approved; or
- (4) When a permitted activity no longer meets general VPA permit conditions.

c. Any owner operating under a general VPA permit may request to be excluded from the coverage of the general VPA permit by applying for an individual VPA permit.

d. When an individual VPA permit is issued to an owner the applicability of the general VPA permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

e. When a general VPA permit is issued which applies to an owner already covered by an individual VPA permit, such owner may request exclusion from the provisions of the general VPA permit and subsequent coverage under an individual VPA permit.

f. A general VPA permit may be revoked as to an individual owner for any of the reasons set forth in § 5.2 or subdivision 2 b of this section subject to appropriate opportunity for a hearing.

§ 6.3. Control of disposal of pollutants into wells.

A. No right to dispose of pollutants into wells shall exist, except as authorized pursuant to a VPA permit issued by the director.

B. Whenever an applicant for a VPA permit proposes to dispose of pollutants into a well, the director shall prohibit the proposed disposal, or specify terms and conditions in the VPA permit which shall control the proposed disposal in order to prevent the pollution of and protect all beneficial uses of state waters, protect the public health and welfare, and require compliance with all applicable water quality standards.

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PART VII. ENFORCEMENT.

§ 7.1. Enforcement.

A. The board may enforce the provisions of this regulation by:

1. Issuing directives in accordance with the law;
2. Issuing special orders in accordance with the law;
3. Issuing emergency special orders in accordance with the law;
4. Seeking injunctions, mandamus or other appropriate remedies as authorized by the law;
5. Seeking civil penalties under the law.
6. Seeking remedies under the law or under other laws, including common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;
2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule, or in any administrative enforcement action when authorized by the board's Procedural Rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the pollutant management activity is located, and at the state capital. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals will be public noticed in accordance with Procedural Rule No. 1. A consent special order is an order issued without a hearing and with the written consent of the affected owner. For the purpose of this regulation, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.
4. When a VPA permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of VPA permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

a. The VPA permit amendment does not have to go to public notice, and

b. The terms of the new consent order are the same as issued to the previous owner.

5. Notwithstanding subdivision B 3 of this section, a special order may be issued by agreement at a board meeting without further notice when a hearing has been scheduled to issue a special order, to the affected owner, whether or not the hearing is actually held.

PART VIII. DELEGATION OF AUTHORITY; TRANSITION.

§ 8.1. Delegation of authority.

The director, or a designee acting for him, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

The provisions of this regulation are severable.

§ 8.2. Transition.

Upon the effective date of this regulation the following will occur:

1. All VPA applications received after that date will be processed in accordance with this regulation.
2. Any owner holding a no-discharge certificate will be notified by the director of the deadline for applying for a VPA permit. All notifications shall be completed by July 1, 1998. Upon notification by the director, the permittee shall have 180 days to apply for a VPA permit. The existing no-discharge certificate will remain in effect until the new VPA permit is issued. Concurrent with the issuance of the VPA permit, the no-discharge certificate will be revoked subject to appropriate notice and opportunity for public hearing. Notwithstanding the forgoing, all no-discharge certificates, whether or not the Certificate bears an expiration date, shall expire no later than July 1, 1999.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-01-003. Rules and Regulations Governing the Certification Process (REPEALED).

Statutory Authority: §§ 53.1-5, 53.1-68, 53.1-141, 53.1-178 and 53.1-182 of the Code of Virginia.

Effective Date: June 16, 1993.

Summary:

On February 19, 1993, the State Board of Corrections adopted a final regulation entitled, "Rules and Regulations Governing the Certification Process, VR 230-01-003:1." Following the effective date of the new regulations, the Board of Corrections, at its April 14, 1993, meeting, approved the repeal of the existing regulation entitled, "Rules and Regulations Governing the Certification Process, VR 230-01-003."

* * * * *

Title of Regulation: VR 230-30-004. Standards for Community Residential Programs. REPEALED

Title of Regulations: VR 230-30-004:1. Standards for Community Residential Programs.

Statutory Authority: §§ 53.1-5 and 53.1-178 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The Standards for Community Residential Programs establish the evaluation criteria for the administration, supervision and certification of community residential programs operated by, or contracted with, the Department of Corrections throughout the state. This revision updates the standards with current program practices. Current VR 230-30-004 will be repealed.

A facility must be certified by the Board of Corrections to prevent the risk of loss of state funding or possible closure. These minimum standards pertaining to the administration of programs, along with standards relating to the health, welfare and safety of residents in such programs which are affiliated with or operated by the Department of Corrections, must be met.

Substantial changes were made in the format and style of this document to conform to the Virginia Register Form, Style and Procedure Manual. These include significant changes in the placement of some paragraphs.

Additionally, many of the standards were rewritten to be more specific concerning the action required by an organization operating a community residential program if it was to be found in compliance with the standards.

VR 230-30-004:1. Standards for Community Residential Programs.

PART I. INTRODUCTION.

§ 1.1. Definitions.

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

"Agency" means the public or private organization that has direct responsibility for the operation of a [community] residential program including the implementation of policy established by the governing authority.

["Agency staff" means any agency administrator, facility director, counselor, case manager, clerical worker or supervisor or others who are employed by, contract with, or volunteer services to the program.]

"Community residential program" means [a nonsecure facility located in the community which provides an alternative to incarceration for those offenders who have been adjudicated by the courts or parole board, any group home, halfway house, or other physically unrestricting facility used for the housing treatment or care of adult offenders established or operated with funds appropriated to the Department of Corrections from the state treasury and maintained or operated by any political subdivision, combination of political subdivisions or privately operated agency within the Commonwealth.]

"Contraband" means items prohibited on facility premises by statute, regulation, or policy.

"Facility" means the physical plant.

"Foot candle" means a unit for measuring the intensity of illumination defined as the amount of light thrown on a

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surface one foot away from the light source.

"Furlough" means a written approval which allows a resident to leave the facility [~~and go into the community~~] for a period of time, including overnight.

"Pass" means a written approval which allows a resident to leave the facility [~~and go into the community~~] for a period of time, other than overnight.

"Program" means the plan or system of residential services of a public or private agency.

"Resident" means an individual participating in a community residential program under the purview of a contractual agreement.

["Staff" means any agency administrator, facility director, counselor, case manager, clerical worker or supervisor or others who are employed by, contracts with, or volunteers services to the program.]

§ 1.2. Legal [~~base basis~~].

Sections 53.1-5 and 53.1-178 of the Code of Virginia are the legal [~~base basis~~] for these standards since they direct the State Board of Corrections to prescribe standards for the development, operation and evaluation of programs and services.

[§ 1.3. Supersession.

VR 230-30-004, Adult Community Residential Services Standards adopted by the Board of Corrections in December 1981 are rescinded ~~in~~ ~~on~~ the effective date of these standards.]

[§ 1.4. § 1.3.] Responsibility.

[The primary responsibility for the application of these standards shall be with the The] public or private contracted agency [shall be responsible for the application of these standards].

PART II.

[ADMINISTRATION AND MANAGEMENT. ADMINISTRATIVE SERVICES.]

[Article 1.] [Administration.]

§ 2.1. [Program administration.]

[A.] The agency shall appoint a governing authority which serves as a link between the residential program and [the] community.

[§ 2.2. B.] The governing authority of the public or private community residential program [~~holds shall hold~~] meetings at least quarterly with the community residential [~~enter program~~] administrator in order to facilitate

communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement community residential programs.

[§ 2.3. The agency and its programs shall be managed by C.] A single administrative officer who reports directly to the governing authority [shall manage the agency and its programs].

[§ 2.4. D.] The [~~program has~~ agency shall have] an operations manual which summarizes approved methods of implementing agency policies [and procedures] and provides details for daily operations of the program.

[§ 2.5. The operations manual is reviewed at least every two years by E.] The governing authority or agency administrator [and updated when necessary shall review the operations manual at least every two years and update when necessary].

[§ 2.6. The agency monitors the implementation of policies and procedures set forth in the operations manual through an annual review by F.] The administrator or designated [agency] staff [shall monitor implementation of policies and procedures set forth in the operations manual through an annual review].

[§ 2.7. Written policy guards against conflict of interest which adversely affect the agency. This policy specifically states G. There shall be a written policy] that [~~no person~~ persons] connected with the agency [~~will shall not~~] use [his their] official position to secure privileges or advantages for [himself themselves].

[§ 2.8. H.] Any community [~~corrections residential~~] program operated exclusively by the Department [of Corrections] shall have a written policy which ensures that [~~it~~ the program] conforms to governmental statutes and regulations relating to campaigning, lobbying and political practices.

[§ 2.9. I.] The agency [~~has shall have~~] a current organizational chart which accurately reflects the structure of authority, responsibility and accountability within the agency.

[§ 2.10. The agency can document its relationship to all funding and regulatory agencies.]

[§ 2.11. The agency has identified, documented and publicized its J. Agency staff shall identify and document the agency's] tax status with the Internal Revenue Service.

[§ 2.12. K.] The agency [~~has shall have~~] by-laws, approved by the governing authority, which [~~are shall be~~] filed with the appropriate local, state or federal body.

[§ 2.13. At a minimum, the agency by-laws for the governing authority L. The agency by-laws for the governing authority shall] include:

1. Membership;
2. Size of the governing authority;
3. Method of selection;
4. Terms of office;
5. Duties and responsibilities of officers;
6. Times authority will meet;
7. Committees;
8. Quorums;
9. Parliamentary procedures;
10. Recording of minutes;
11. Method of amending by-laws;
12. Conflict of interest provisions; and
13. Specification of the relationship of the agency administrator to the governing authority.

[§ 2-14. M.] A permanent record [~~is shall be~~] kept of all meetings of the governing authority.

[~~Article 2-~~
~~Fiscal Management.~~]

[§ 2-15. § 2.2. Fiscal management.]

[A.] The agency administrator [~~repares shall prepare~~] an annual written budget of anticipated revenues and expenditures which [~~is shall be~~] approved by the [~~appropriate~~] governing authority.

[§ 2-16. B.] The agency [~~has shall have~~] a budget which links program functions and activities to the [~~cost costs~~] necessary for their support.

[§ 2-17. C.] The agency administrator [~~participates shall participate~~] in budget reviews conducted by the governing authority.

[§ 2-18. D.] Written [~~poicies and~~] procedures [shall] govern revisions in the budget.

[§ 2-19. E.] Written fiscal procedures [shall] provide for accounting [~~for of~~] all income and expenditures [~~on an ongoing basis~~].

[§ 4-12. F.] Written procedure [~~governs shall govern~~] the handling and use of residents' money. This procedure shall [~~be in compliance comply~~] with current Department of Corrections operating procedures.

[§ 2-20. There is an G.] An annual independent

financial audit of the agency [shall be] performed by a certified public accounting firm or a governmental auditing agency.

[§ 2-21. The agency ~~prepares~~ H. Agency staff shall prepare] and [~~distributes distribute~~ the following documents] to its governing authority [;] and [the Department of Corrections] upon request [~~to the Department of Corrections, the following documents~~]:

1. Annual budget;
2. Income and expenditure statements;
3. Funding source financial reports; and
4. Independent audit report.

[§ 2-22. I.] Written fiscal policies and procedures, which are adopted by the governing authority [; shall] include at a minimum:

1. Internal controls;
2. Petty cash;
3. Bonding;
4. Signature control on checks;
5. Resident funds; and
6. Employee expense reimbursement.

[§ 2-23. J.] The agency [~~can document shall have~~] insurance coverage [~~for itself~~] which includes coverage for:

1. Physical plant;
2. Equipment;
3. Personal and property injury to employees, residents and third parties; and
4. Professional malpractice.

[§ 2-24. Written policy and procedure ensures a current inventory of all property.]

[§ 2-25. K.] Written procedure [~~governs the shall govern vendor selection and~~] purchasing and requisitioning of supplies [; and] equipment [~~and vendor selection~~].

[§ 2-26. L.] There [~~are shall be~~] written procedure for documenting and authorizing compensation to consultants.

[~~Article 3-~~
~~Personnel.~~]

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[§ 2-27. § 2.3. Personnel.]

[A.] Written personnel policies and procedures, which are approved by the governing authority, [shall] include at a minimum:

1. Recruitment;
2. Employment practices and procedures including in-service training and staff development;
3. Promotion;
4. Grievance and appeal;
5. Personnel records and contents;
6. Benefits;
7. Holidays;
8. Leave;
9. Hours of work;
10. Salaries;
11. Disciplinary action procedures; and
12. Termination and resignation.

[§ 2-28. The agency makes B. Agency staff shall make] available to all employees a copy of all personnel policies and procedures. Each employee [~~confirms~~ shall confirm] in writing the availability and review of current policies and procedures.

[§ 2-29. C.] The agency [~~maintains~~ administrator shall maintain] written job descriptions and job qualifications for all positions in the agency.

[§ 2-30. Written policy and procedure govern the confidentiality D. Confidentiality] of personnel records [and protection against unauthorized examination shall be governed by written procedure].

[§ 2-31. A written procedure exists whereby the E. Written procedure shall allow an] employee [~~can~~ to] challenge information in [~~his~~ their] personnel file and have it corrected or removed if proven inaccurate.

[§ 2-32. Written policies and procedures require F. All employees shall have] an annual performance evaluation [of all employees]. This evaluation [is shall be] in writing and [is shall be] based upon defined criteria. Each performance evaluation [is shall be] reviewed and discussed with the employee.

[§ 2-33. The agency provides initial G. Agency staff shall provide all new employees] orientation, to include a review of all policies and procedures, [for all new

employees] beginning the first day of employment and concluding within 30 days. The employee [~~signs~~ shall sign] and [~~dates~~ date] a statement that orientation has been [~~received~~ completed].

[§ 2-34. H.] An employee shall not assume sole responsibility for any working shift prior to the completion of orientation.

[§ 2-35. I.] The agency [~~does~~ shall] not discriminate or exclude from employment women working in men's programs or men working in women's programs.

[§ 2-36. J.] The agency [~~complies~~ shall comply] with all governmental regulatory requirements related to employment and personnel practices.

[§ 2-37. K.] Written policy [~~outlines~~ shall govern] experience and education equivalents necessary for employment.

[§ 2-38. L.] Criminal records checks shall be performed on all employees prior to hiring.

PART III. FACILITY.

§ 3.1. [Facility operation.]

[A.] The [agency administrator shall ensure that the] facility conforms to all applicable zoning ordinances or, through legal means, [is attempting attempts] to comply with or change such laws, codes, or zoning ordinances.

[§ 3-2. B.] The [agency administrator shall ensure that the] facility [~~conforms to all~~ complies with] applicable state and local building codes.

[§ 3-3. C.] The [agency administrator shall ensure that the] facility complies with [the] sanitation and health codes of the [~~local of~~] state [or local] jurisdiction.

[§ 3-4. D. The [agency administrator shall ensure that the] facility complies with the regulations of the state or local fire safety authority which has [primary] jurisdiction over the [agency facility].

[§ 3-5. E.] Smoke detectors [are shall be] installed, operational and inspected as recommended by the fire marshal or fire department representative.

[§ 3-6. F.] Automatic, permanent emergency lights [are shall be] installed, operational, and [are] inspected as recommended by the fire marshal or fire department representative [; .]

[§ 3-7. There is a G. Agency staff shall have a] housekeeping and maintenance plan [which ensures the . The] facility [is shall be] clean and in good repair.

[§ 3-8. H.] The facility [is shall be] located within 10

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city blocks of public transportation or other means of transportation [~~are shall be~~] available.

[§ 3.9. ~~All sleeping~~ I. Sleeping] quarters and bathroom areas [shall] have a minimum of 20 footcandles of light.

[§ 3.10. ~~All sleeping~~ J. Sleeping] quarters shall be properly ventilated.

[§ 3.11. ~~A~~ K. Sleeping quarters shall have a] minimum of 60 square feet of floor space per resident [~~is provided in the sleeping area of the facility~~].

[§ 3.12. ~~The sleeping area provides some degree of privacy.~~]

[§ 3.13. ~~L.~~] Male and female residents shall not occupy the same sleeping quarters.

[§ 3.14. ~~M.~~] Each resident [~~is shall be~~] provided, at a minimum, the following:

1. Bed;
2. Mattress and pillow;
3. Supply of bed linens;
4. Chair; and
5. Closet or locker space.

[~~N.~~ Residents shall be afforded space in the facility for:

1. Private counseling;
2. Group meetings;
3. Visitation.]

[§ 3.15. ~~Within reasonable limits the agency permits residents to decorate their sleeping quarters with personal possessions, pictures and posters.~~]

§ 3.16. ~~Private counseling space is provided in the facility.~~

§ 3.17. ~~Space to accommodate group meetings of the residents is provided in the facility.~~

§ 3.18. ~~A visiting area is provided in the facility.~~]

[§ 3.19. ~~O.~~] The facility [~~has shall have~~] a minimum of one toilet for every 10 residents.

[§ 3.20. ~~P.~~] The facility [~~has shall have~~] a minimum of one wash basin for every six residents.

[§ 3.21. ~~Q.~~] The facility [~~has shall have~~] a minimum of one shower or bathing facility for every 10 residents.

[§ 3.22. ~~R.~~] The facility [~~has shall have~~] one washer

and one dryer for every 16 residents, or equivalent laundry service [~~is shall be~~] available in the immediate vicinity of the facility.

[~~S.~~ Rules and regulations pertaining to residents shall be conspicuously posted in the facility.]

[§ 3.23. ~~T.~~] Written procedures [shall] govern transportation of clients which ensure at a minimum:

1. Those staff providing transportation shall have valid operator's license;
2. Reporting of accidents; and
3. The vehicle's operation is in accordance with all state and local laws or ordinances.

[§ 3.2. Staffing.

A. The staffing pattern of the facility shall concentrate agency staff when the majority of residents are available to use facility resources.

B. There shall be at least one agency staff person on facility premises who is awake, available and responsive to residents' needs 24 hours a day.

§ 3.3. Resident movement.

A. Resident movement into and out of the facility shall be governed by written procedure. The procedure shall include, at a minimum, a sign-in and sign-out system which includes:

1. Destination and phone number;
2. Reason for signing out;
3. Time and date out;
4. Expected time of return;
5. Resident's signature at time of departure;
6. Staff signature or initials at time of departure;
7. Date of return;
8. Time of return;
9. Resident's signature at time of return;
10. Staff signature or initials at time of return.

B. Passes and furloughs shall be issued in conformance with Department of Corrections operating procedures.

C. Movement within the facility shall be governed by procedures which provide for:

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1. An account of the residents' whereabouts in the facility at all times;
2. A population count, by resident name, conducted by staff every two hours;
3. Visual contact with each resident in the facility during the count; and
4. Count results documented and initialed by staff.

D. Verification of residents' whereabouts when not in the facility shall be governed by written procedures. The forms of verification shall include but not be limited to:

1. Random telephone contacts to the authorized destination;
2. Documentation from authorized destination which includes:
 - a. Signature of individual visited;
 - b. Date and time of visit; and
3. Random on-site visits to authorized destination.

§ 3.4. Special procedures.

A. There shall be written emergency procedures which shall include the following:

1. Fire;
2. Evacuation;
3. Bomb or bomb threat;
4. Hostage;
5. Disturbances, which at a minimum include riots, assaults, and fights;
6. Deaths;
7. Power failure;
8. Loss of heat;
9. Loss of water;
10. Escape or absconding; [and]
11. Employee work stoppage.

B. Fire emergency procedures shall be posted conspicuously in the facility.

C. Agency staff shall conduct and document monthly emergency fire drills, including evacuation of residents.

D. No resident or group of residents shall be in a position of control or authority over other residents.

E. Written procedure shall restrict the use of physical force to instances of justifiable self-protection, protection of others, and the minimum degree necessary to control the situation.

F. Agency staff shall maintain and make available written procedures for conducting searches of residents, agency staff, visitors and the facility in order to control contraband.

G. Written procedures shall govern the disposal of contraband.

H. Written procedures for reporting absconders shall comply with Department of Corrections operating procedures.

I. Written policy shall prohibit the carrying and use of weapons in the facility by both agency staff and residents.

J. Agency staff shall maintain a log of occurrences and daily events which shall:

1. Be kept in a bound book for permanent residence;
2. Be written legibly in ink;
3. At each entry, contain [the] full names, at least once, of the residents involved in the events;
4. Document a briefing of occurrences and important events between outgoing and incoming staff; [and]
5. Contain a signature or initials of staff at the conclusion of their shift;
6. Become a legal document of the facility and shall be maintained as such.]

PART IV. PROGRAM SERVICES.

[Article 1.]
[Intake.]

§ 4.1. [Intake.]

[A. Written policies and procedures govern intake and criteria for acceptance into the program. Criteria for acceptance into the program and intake shall be governed by written policy and procedure.]

[§ 4.2. The agency completes B. Agency staff shall complete] an initial intake information form on each client admitted into residency which, unless prohibited by statute, includes at a minimum:

1. Name;

2. Address;
3. Date of birth;
4. Social Security Number;
5. Current photograph;
6. Sex;
7. Race or ethnic origin;
8. Reason for referral;
8. Whom to notify in case of emergency;
10. Date information gathered;
11. Signature of both interviewee and employee gathering information;
12. Name of referring agency or committing authority;
13. Special medical problems or needs;
14. Personal physician, if applicable; and
15. Legal status, including jurisdiction, [and] length and conditions of sentence.

[§ 4.3. The agency distributes C. Agency staff shall distribute] a copy of [the criteria for acceptance into the program and] intake policies [and procedures] to [all] referral agencies and interested parties.

[§ 4.4. The agency advises D. Agency staff shall provide in writing to] the referral agency [when a prospective resident is not accepted into the program, stating specific reasons and prospective resident, reasons for nonacceptance into the program].

[§ 4.5. The agency provides, upon request of the prospective resident, the reasons for nonacceptance into the program.]

[§ 4.6. E.] At the time of intake, agency staff [discuss shall review] goals, services available, program rules, and [possible] disciplinary actions with the resident. This [is procedure shall be] documented by employee and resident signatures.

[Article 2:
Program.

§ 4.7. The program provides, or makes referrals when needed, for the following services:

1. Supervision in the community;
2. Shelter;

3. Food service (where applicable);
4. Financial assistance;
5. Individual counseling;
6. Assistance with transportation;
7. Medical health services;
8. Mental health services;
9. Vocational evaluation, counseling and training;
10. Employment counseling and placement;
11. Education or training counseling and placement; and
12. Group counseling.]

[§ 4.8. F.] Written procedure [governs shall govern] the assignment of case management of each resident to a staff member.

[§ 4.9. The community residential program documents its efforts to encourage and foster the development and use of community resources to help offenders.

§ 4.10. The agency maintains an inventory of functioning community agencies. The effectiveness of the services provided to the program by the agencies is evaluated annually.

§ 4.11. Staff use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become self-sufficient.

§ 4.12. Written procedure governs the handling and use of residents' money. This procedure shall be in compliance with current Department of Corrections operating procedures.]

[§ 4.13. G.] Where a language or literacy problem exists which can lead to [resident a resident's] misunderstanding of agency rules and regulations, assistance [is shall be] provided to the resident either by staff or by another qualified individual under the supervision of a staff member.

[§ 4.14. The program documents that each resident has received, read and understands program rules and regulations. Documentation shall include resident and staff signature and date.

§ 4.15. Written procedure controls movement in and out of the facility. The procedure shall include, at a minimum, a sign in and out system which includes:

1. Destination and phone number;

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2. Reason for signing out;
3. Time and date out;
4. Expected time of return;
5. Resident's signature at time of departure;
6. Staff signature or initials at time of departure;
7. Date of return;
8. Time of return;
9. Resident's signature at time of return; and
10. Staff signature or initials at time of return.

§ 4.16. The program shall conform to existing department operating procedures for passes and furloughs.

§ 4.17. At a minimum, written procedures provide for:

1. An account of the residents' whereabouts in the facility at all times;
2. A population count, by resident name, conducted by staff every two hours;
3. Visual contact with each resident in the facility during the count; and
4. Count results documented and initialed by staff.

§ 4.18. All program rules and regulations pertaining to residents are conspicuously posted in the facility.

§ 4.19. Written procedures govern verification of residents whereabouts when not in the facility. The forms of verification shall include but not be limited to:

1. Random telephone contacts to the authorized destination;
2. Documentation from authorized destination which includes:
 - a. Signature of individual visited;
 - b. Date and time of visit; and
3. Random on-sight visits to authorized destination.]

[§ 4.20. § 4.2. Programs.]

[Program A. Agency] staff [shall] design a personalized program with and for each resident which includes:

1. Measurable criteria of expected behavior and accomplishments;

2. Time schedule for achievement; and
3. Staff and resident signatures.

[§ 4.21. Program B. Agency] staff [shall] review changes in the personalized program with the resident [;] and document this procedure with staff and resident signatures.

[§ 4.22. Resident progress is reviewed by program staff at least every two weeks with the resident. C. Agency staff shall review resident progress with the resident every two weeks] The outcome of each review [is shall be] documented in the [client's resident's] case file.

[§ 4.23. The staffing pattern of the facility concentrates staff when most residents are available to use facility resources.

§ 4.24. There is at least one staff person who is awake, available and responsive to residents' needs on facility premises 24 hours a day.

§ 4.25. Written procedures, including an appeal procedure, exist for resident grievances.]

[§ 4.26. D.] Written [policies and] procedures [shall] provide [for residents] increasing [opportunities and privileges for resident] involvement with family and [in] community activities prior to final release.

[§ 4.27. Written policy and procedure shall ensure that E. Residents'] attendance and participation in religious services and activities [is strictly shall be] voluntary. Residents shall be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.

[§ 4.28. F.] Written [policy and procedure procedures shall] ensure that residents [may] receive approved visitors during established visiting hours, except where there is substantial evidence that a visitor poses a threat to the safety of the resident or the security of the facility.

[§ 4.29. Written policy and procedure ensure that resident mail, both incoming and outgoing, is not read or withheld and that inspection of resident mail for money or contraband shall occur in the presence of the resident.]

[§ 4.30. The program provides G. Agency staff shall provide] for [a variety of] recreational and leisure time activities.

[H. Agency staff shall provide, or make referrals when needed, for the following services:

1. Supervision in the community;
2. Shelter;
3. Food service (where applicable);

4. Financial assistance;
5. Individual counseling;
6. Assistance with transportation;
7. Medical health services;
8. Mental health services;
9. Vocational evaluation, counseling and training;
10. Employment counseling and placement;
11. Education or training counseling and placement; and
12. Group counseling.

I. Agency staff shall use community resources, either through referrals for service or by contractual agreement, to provide residents with the services to become self-sufficient.

J. Agency staff shall ensure that residents' mail, both incoming and outgoing, is not read or withheld and that inspection of residents' mail for money or contraband shall occur in the presence of the resident.

K. Resident grievances shall be governed by written procedures which shall include an appeals process.]

[Article 3.
Records.]

[§ 4.3. Case records.]

[§ 4.31. The program maintains A. Agency staff shall maintain] a [case] record for each [client resident] in which all significant decisions and events are recorded. The records shall include, at a minimum, but are not limited to, the following information:

1. Initial intake information form;
2. Case information from referral source;
3. Case and social history;
4. Emergency contact information;
5. Medical record, when available;
6. Individual plan or program, [individual] group and family counseling shall be documented;
7. Signed release of information forms;
8. Evaluation and progress reports;
9. Current employment data;

10. Program rules and disciplinary policy, signed by [participant resident and agency staff] ;

[~~11.~~ Documented legal authority to accept participation;]

[~~12.~~ 11.] Grievance and disciplinary record;

[~~13.~~ 12.] Subsequent referrals to other agencies by the program; and

[~~14.~~ 13.] Termination summary.

[§ 4.32. Staff members B. Agency staff shall] make entries into the case records and date and initial each entry.

[§ 4.33. All case C. Case] records shall be [marked "confidential" and] maintained in [a secure location locked file cabinets or rooms] to minimize the possibility of theft, loss, destruction or unauthorized use.

[§ 4.34. Written procedure provides for a D. Agency staff shall review case records] monthly [case record review] to ensure that the case is current and accurate.

[§ 4.35. Written procedure governs client access, agency personnel access, outside agency access, and designates personnel responsible for the release of client information.]

[E.] The confidentiality of case records [is shall be] maintained in accordance with federal and state laws. [Written procedures shall govern access to case records and designate personnel responsible for release of resident information.]

[§ 4.36. All case records are marked "confidential" and kept in locked file cabinets which are also marked "confidential."]

[§ 4.37. F.] Written [policy and] procedure [shall] govern the retention and [distribution destruction] of case records in accordance with state law.

[§ 4.38. The program provides G. Agency staff shall provide] a "Release of Information Consent Form" which at a minimum complies with applicable federal and state laws and includes:

1. [Name of person Person] , agency or organization requesting information;
2. [Name of person Person] , agency or organization releasing information;
3. [The specific Specific] information to be disclosed;
4. [The purpose Purpose] or need for the information;

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5. Expiration date;
6. Date consent form is signed;
7. Signature of the resident; and
8. Signature of individual witnessing resident's signature.

[Article 4.
Citizen and Volunteer Involvement.]

[§ 4.4. Citizen and volunteer involvement.]

[~~§ 4.39.~~ A.] Written [~~policies and procedures~~ policy and procedure shall] govern citizen involvement in the programs [and shall include recruitment, selection, training, orientation, responsibilities, evaluation, supervision and termination of volunteers.]

[§ 4.40. Written policies and procedures for citizen involvement include a system for recruitment, selection, training, orientation, responsibilities, evaluation, termination and supervision of volunteers.]

[§ 4.41. There is documentation B. Agency staff shall document] that volunteers complete an orientation and training program before they participate in their assignments.

[Article 5.
Communication and Coordination.

§ 4.42. The residential program documents its efforts in conducting a continuing program of public information and education.

§ 4.43. The program documents working relationships with other components of the criminal justice system.]

PART V.
SUPPORT SERVICES.

[Article 1.
Food Service.]

[§ 5.1. Food services.]

[§ 5.1. The program provides or contracts A. Agency staff shall provide or contract] for food service and [ensures ensure] that the service meets or exceeds nutritional standards as recommended by the Department of Corrections.

[§ 5.2. When the program provides or contracts for food service, the B. The food] service [program] shall have an annual health and sanitation inspection by state or local authorities. Any health and sanitation deficiencies shall have a documented plan of corrective action which has been approved by the appropriate state or local inspector.

[§ 5.3. C.] When [the program provides agency staff provide a] food service [program] , food service staff [shall] develop at least one week of advance-planned menus [and substantially follow the schedule] .

[§ 5.4. When the program provides food service, the D. The] dining area [is shall be] ventilated [; and] properly furnished [and suitably decorated] .

[§ 5.5. E.] When [the program provides agency staff provide a] food service [program] , all food service [personnel staff or residents providing food service] shall:

1. Have clean hands and fingernails;
2. Wear hair nets or caps;
3. Wear clean washable garments; and
4. Practice hygienic food handling techniques.

[§ 5.6. F.] When [the program provides agency staff provide a] food service, [program] , all food service [personnel staff or residents providing food service] shall have an annual physical to ensure they are in good health and free from communicable disease.

[§ 5.7. G.] When [the program provides for agency staff provide a] food service [program] , all foods [are shall be] properly stored at the completion of each meal.

[§ 5.8. The program provides special H. Special] diets [as required shall be provided] to meet the documented medical and religious needs of residents.

[Article 2.
Medical Care and Health Services.]

[§ 5.2. Medical care and health services.]

[§ 5.9. The program has A. Agency staff shall maintain] first aid equipment approved by a recognized health authority [available at all times] for medical emergencies.

[§ 5.10. B.] Written procedure [ensures shall ensure] perpetual availability of first aid equipment and supplies.

[§ 5.11. The program maintains C. Agency staff shall maintain] a current inventory control list of first aid equipment and supplies.

[§ 5.12. D.] One [staff member agency staff] on each shift of the [community] residential program [is shall be] trained in emergency first aid procedures, including cardiopulmonary resuscitation.

[§ 5.13. E.] Routine medical services and 24-hour [emergency] medical services [are shall be] available to residents.

[§ 5.14. The program has written emergency medical back-up plans which are communicated to all employees and residents.]

[§ 5.15. The program documents working relationships with community health care agencies in order to assist residents in meeting their health care needs.]

[F. At the time of the resident's admission, a medical assessment shall be completed to determine if the resident has any special medical needs. Agency staff shall be made aware of residents' special medical problems.]

[§ 5.16. G.] Written [policy and procedure procedures shall] provide for medical examination of any [employee agency staff] or resident suspected of having a communicable disease.

[§ 5.17. H.] Written [policy and procedure procedures shall] address the management of serious and infectious diseases for residents and [agency] staff.

[§ 5.18. At the time of the resident's admission, a medical assessment is completed to determine if the resident has any special medical needs. Program staff are aware of residents' special medical problems.]

[§ 5.19. I.] When a urine surveillance program is in effect, written [policy and procedure procedures shall] govern collection of samples and interpretation of results.

[§ 5.20. J.] Written [policy and procedure procedures shall] govern the possession and control of prescribed medications and over-the-counter drugs.

[PART VI. SPECIAL PROCEDURES.

§ 6.1. Written emergency procedures cover the following:

1. Fire;
2. Evacuation;
3. Bomb or bomb threat;
4. Hostage;
5. Disturbances, which at a minimum include riots, assaults, and fights;
6. Deaths;
7. Power failure;
8. Loss of heat;
9. Loss of water;
10. Escape or absconding; and

11. Employee work stoppage.

§ 6.2. The program has copies of the fire emergency plans posted conspicuously in the facility.

§ 6.3. The facility staff conducts and documents monthly emergency fire drills, to include evacuation of residents.

§ 6.4. Written policy ensures that no resident or group of residents is in a position of control or authority over other residents.

§ 6.5. Written policy restricts the use of physical force to instances of justifiable self-protection, protection of others, and only to the minimum degree necessary to control the situation.

§ 6.6. The program maintains and makes available written policies and procedures for conducting searches of residents, staff and visitors as well as the facility, in order to control contraband.

§ 6.7. Written policy and procedure govern the disposal of contraband found during searches.

§ 6.8. Written procedures for reporting absconders comply with department operating procedures.

§ 6.9. Written policy prohibits the carrying and use of weapons in the facility by both staff and residents.

§ 6.10. The facility maintains a log of occurrences and important events which shall:

1. Be kept in a bound book for permanent residence;
2. Be written legibly in ink;
3. At each entry, contain full names, at least once, of the residents involved in the events;
4. Unless otherwise documented, contain a behavioral and factual description of daily events, with personal comments held to a minimum;
5. Document a briefing of occurrences and important events between outgoing and incoming staff;
6. Contain a signature or initials of staff at the conclusion of their shift; and
7. Become a legal document of the facility and shall be maintained as such.]

DEPARTMENT OF HEALTH (STATE BOARD OF)

REGISTRAR'S NOTICE: Due to its length, the Waterworks Regulation filed by the State Board of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu

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of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Department of Health.

Title of Regulation: VR 355-18-000. Waterworks Regulations - Surface Water Treatment and Total Coliform.

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Effective Date: June 23, 1993.

Summary:

The Virginia Department of Health is the delegated state agency for primary enforcement authority (primacy) for the federal Safe Drinking Water Act and must meet certain United States Environmental Protection Agency mandates to retain this authority. These amendments to the existing Waterworks Regulations incorporate the federal Safe Drinking Water Act Total Coliform Rule and Surface Water Treatment Rule. The amendments conform the state program to federal law and should avoid duplicative enforcement action by the United States Environmental Protection Agency under federal law.

This regulation will supersede an emergency regulation effective June 24, 1992, and published July 13, 1992.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: VR 380-03-02. Virginia Work-Study Program Regulations (REPEALED).

Title of Regulation: VR 380-03-02:1. Virginia Work-Study Program Regulations.

Statutory Authority: § 23-38.70 of the Code of Virginia.

Effective Date: June 30, 1993.

Summary:

Section 23-38.70 of the Code of Virginia authorizes the Council of Higher Education to develop regulations and procedures for the operation of the Virginia Work-Study Program (VWSP). The VWSP regulations replace regulations which are outdated and, in places, ambiguous. The major provisions are institutional application procedures, distribution of funds, student eligibility, restrictions on student placement and compensation, and responsibilities of involved parties.

The substantive changes from the proposed regulations to the final are: a more detailed application procedures section, a listing of the criteria used to evaluate institutional applications, a provision that

allows for a waiver or partial waiver of employer matching funds for public school systems that have a high concentration of low-income students, and a provision that would allow graduating high school seniors to participate in the summer component of the program.

VR 380-03-02:1. Virginia Work-Study Program Regulations.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Accredited" means an institution which holds either candidacy status or full membership in an accrediting association recognized by the United States Department of Education or an institution approved to confer degrees pursuant to the provisions of §§ 23-265 through 23-276 of the Code of Virginia.

"Applicant" means any student [who is a domiciliary resident of Virginia and] who [has] completed an approved application for need-based aid and filed the application by the closing date established by the participating institution at which the student will enroll.

["Bona-fide domiciliary resident of Virginia" means a student who is determined by the council or by a participating state-supported institution to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.]

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

["Domiciliary resident of Virginia" means a student who is determined by the council or by a participating institution to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.]

"Eligible course of study" means a curriculum of courses in a degree-granting program at the undergraduate, graduate, or first professional level which requires at least one academic year (30 semester hours or its equivalent) to complete. Courses of study which provide religious training or theological education are not eligible courses of study under the Virginia Work-Study Program. [Normally,] Programs in the 39.xxxx series, as classified in

the National Education Center for Educational [Statistics' Classification of Instructional Programs (CIP),] are not eligible programs.

"Eligible employer" means a public or private, nonprofit organization authorized to operate within the Commonwealth of Virginia whose principal mission is to provide assistance (see definition of "public service") which principally benefits residents of Virginia. Religious or political organizations which otherwise meet this definition are not eligible employers under the program.

"Eligible postsecondary institution" means any accredited, degree-granting institution of higher education whose principal campus is located in Virginia and any business, trade, or technical school which is accredited by a national or regional accrediting agency for postsecondary institutions recognized by the U.S. Secretary of Education and which is certified to operate in the Commonwealth by the Board of Education pursuant to Chapter 16 (§ 22.1-319 et seq.) of Title 22.1 of the Code of Virginia. Institutions whose primary purpose is to provide religious training or theological education are not eligible to participate in the program.

"Expected Family Contribution" (EFC) means the amount a student and his family is expected to contribute toward the cost of college attendance. A student's EFC will be determined by the institution using a method of needs analysis approved by the council. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors which affect the family's ability to pay.

"Financial need" means any positive difference between a student's Cost of Attendance and the student's Expected Family Contribution (EFC), as determined by a participating institution using a nationally-accepted method of needs analysis approved by the council.

"Fiscal year" means the period extending from July 1 to June 30.

"Off-campus position" means a position with an eligible employer other than the participating postsecondary education institution at which the student is enrolled. When an institution or a third party public or private nonprofit agency (e.g., Virginia State University's Virginia Program) agrees under contract with an eligible off-campus employer to act as the payroll agent, and the institution or the third party agency receives total reimbursement of the nonstate share of student wages and fringe benefits from the employer, the student will be deemed to be employed off campus.

"On-campus position" means a position with a public or private nonprofit participating institution at which the student is enrolled.

"Part-time study" means enrollment for at least six credit hours per semester or [quarter, or] its equivalent.

The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses and other elective courses which normally are not counted toward a certificate, diploma, or degree at the participating institution.

"Participating institution" means any eligible postsecondary institution which is approved to receive state funds to match student wages under the Virginia Work-Study Program.

"Program" means the Virginia Work-Study Program (VWSP).

"Political organization" means any person or other entity whose primary purpose is to advocate the election of a candidate to public office or the passage of specific legislation.

"Public service job" means a job that provides assistance that directly benefits or meets the needs of a particular group of citizens in the fields of education (elementary, secondary, and postsecondary), health, recreation, social services and human services.

"Religious organization" means a church or any entity controlled by a church or whose primary purpose is provision of sectarian services.

PART II INSTITUTIONAL PARTICIPATION IN THE PROGRAM.

§ 2.1. Application procedures.

To participate in the program, an institution shall file an application with the council before an annually established closing date. The application must be on a form approved by the council and contain the information needed by the council to determine the allocation of its available funds.

[§ 2.2. Content of the application.

A. An institution's application shall include the information listed in this section. Certain information may be more relevant to some institutions than to others. The variety of information requested ensures that the diverse institutions expected to participate in the program are given ample opportunity to demonstrate institutional strengths.

B. Each application for initial participation will contain the following:

1. A description of proposed on- and off-campus positions and the agencies that will be served;
2. The amount of funds for wages the institution expects to award;
3. An estimate of the amount of job location and

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development funds needed and an explanation of how the funds will be used;

4. An explanation of how students are placed based on the students' interests and position requirements; and

5. A summary of the evaluation techniques the institution will use to evaluate the effectiveness of its program.

C. Each application from current participants will contain the following:

1. A description of any changes to the institution's current program;

2. An explanation of why 100% of funds were not used, if the current year's allocation will not have been used by the end of the fiscal year; and

3. A summary of the evaluation techniques the institution will use to evaluate the effectiveness of its program.

§ 2.3. Evaluation of the application.

A. Each application for initial participation will be evaluated based on the criteria listed below:

1. Mix of on- and off-campus positions in relation to the location of the institution;

2. Efficient use of job location and development funds;

3. Variety of agencies; and

4. Completeness of the evaluation techniques.

B. Each application from current participants will be evaluated based on the criteria listed in this subsection:

1. If an institution has not changed its program, the evaluation will be based on the reason why 100% of funds were not used, if the institution will not have used its allocation by the end of the fiscal year; or

2. If an institution has changed its program, the changes will be evaluated based on the criteria for initial applicants.]

PART III.

DISTRIBUTION OF FUNDS AMONG PARTICIPATING INSTITUTIONS.

§ 3.1. Allocation method.

Distribution of program funds is based on an allocation method based on the council's calculation of financial aid need at all institutions. Each participating institution shall receive a proportional share of total program funds based on its share of total need. The institution's allocation shall

be its share or the amount requested in its application, whichever is less. Failure to expend the previous year's allocation may result in reduced funding for the following year as provided hereinafter.

§ 3.2. State matching funds.

A. The Commonwealth's share of a student's compensation will be [~~determined annually~~ established by the council] . Off-campus positions will receive a higher percentage of state matching funds than on-campus positions. [Public school systems may receive a waiver or partial waiver of the employer's matching portion for earned wages only, after determination by the council that the school system has a high concentration of low-income students.]

B. Without reducing student compensation, off-campus employers may agree to pay higher contributions than normally would result if state matching funds were provided at the maximum permitted level. State funds conserved under this approach may be used by the institution to fund additional student employment.

§ 3.3. Reallocation of unused funds; penalties for failure to release unused funds for mid-year reallocation.

A. [~~Procedures for the mid-year reallocation of funds.~~] By no later than March 15 of each fiscal year, a participating institution shall file with the council a Spring Funds Usage Report. The institution will specify the amount of state funds, if any, it will not use by year's end. The institution will authorize the release of those funds so that the council may reallocate the funds to other participating institutions.

B. [~~Requests for additional funds.~~] Institutions which meet their approved job development objectives and have awarded all of their state matching funds may request additional funds, should such funds become available.

C. [~~Failure to expend funds.~~] An institution which returns a significant amount of unused funds at the end of the fiscal year, as determined by the council, may receive an allocation reduced by that amount the following year.

§ 3.4. Use of funds.

An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur. The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Program funds shall be deposited in a noninterest bearing account established and maintained exclusively for that purpose. Funds may only be disbursed to student accounts receivable or to the council. All unused funds must be returned to the council no later than the end of the fiscal year.

Funds [for wages] received by the institution under the program may be used only to pay awards to students. The funds are held in trust by the institution for the intended student beneficiaries and may not be used for any other purpose. [Job location and development funds may be used only for costs associated with developing new positions. The funds may not be used for any other purpose.]

Any income realized [; or to be realized, on program investment income on state funds] will revert to the Commonwealth of Virginia. [Funds, the foregoing notwithstanding, are Such income is] the property of the Commonwealth of Virginia.

PART IV. STUDENT ELIGIBILITY AND SELECTION OF AWARD RECIPIENTS.

§ 4.1. Eligibility criteria.

In order to be eligible for employment under the program an applicant will:

1. Be enrolled for at least part-time study as an undergraduate, graduate, or first-professional student in an eligible course of study at a participating institution;
2. Be a [bona-fide] domiciliary resident of Virginia eligible for in-state tuition rates as defined in § 23-7.4 of the Code of Virginia;
3. Be maintaining satisfactory academic progress;
4. Be pursuing a degree in a field other than religious training or theological education;
5. Meet the eligible employer's job requirements; and
6. Demonstrate sufficient financial need and be capable of benefiting from the work experience.

§ 4.2. Criteria for determining financial need and individual awards.

An institution shall determine a student's financial need using a nationally-accepted method of needs analysis approved by the council. An award under the program will be set by the institution so that the student's total financial aid, including the program award, will not exceed the student's need.

§ 4.3. Priorities in placing students.

A. Although the program assists financially needy students, the relative financial need of qualified students may be a secondary consideration when placing students in public service jobs under the program. Preference for the jobs may go to those students best qualified, as determined by the institutions and the prospective

employers, to fill the eligible jobs, especially when the jobs also complement the students' educational or career interests.

B. Students employed under the program may be placed in on- and off-campus positions that meet the definition of a public service job, as determined by the financial aid officer, and that provide the student with tangible educational or career benefits. State funds shall not be used to supplant federal [College] Work-Study Program funds.

PART V. RESTRICTIONS ON STUDENT PLACEMENT AND COMPENSATION.

§ 5.1. Displacement of employees.

State work-study students shall not displace employed workers or impair existing contracts for services. Accordingly, a student employed under the program will not be placed in a position which has been occupied by a permanent employee during the current or preceding fiscal year, as determined by the employer in consultation with the financial aid officer.

§ 5.2. Rate of compensation.

Work-study positions will receive compensation equal to the salary of a comparable position at a comparable level, as determined by the participating institution after consultation with the employer and any other appropriate sources of information. Under no circumstances will a work-study student be compensated at a rate higher than the rate paid to permanent employees with comparable experience.

§ 5.3. Employer share of student compensation.

The employer shall pay its share of wages, as determined by the financial aid officer, plus the costs of any employee benefits, including all payments due as an employer's contribution under the state workers' compensation laws, federal social security laws, and other applicable laws.

§ 5.4. Academic credit.

A student may receive academic credit for experience gained through the program, as determined by a participating institution in consultation with the employer.

§ 5.5. Maximum hours worked.

A student's total employment under the program cannot exceed 20 hours per week when classes are in session and cannot exceed 40 hours per week when classes are not in session.

§ 5.6. Concurrent employment.

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A student employed under the program shall not be employed concurrently by the federal [College] Work-Study Program or any other institutional student employment program so that total employment exceeds 20 hours per week when classes are in session or 40 hours per week when classes are not in session for activities that are political or religious in nature] .

§ 5.7. Political or religious employment.

Students under the program shall not be employed by any political or religious organization [for activities that are political or religious in nature] .

§ 5.8. Employment during nonenrollment periods.

A student may be employed under the program during the summer or other vacation period or the full-time work period of a cooperative education program. To be eligible for this employment, a student must [have been enrolled at least half time in the prior term and] be preregistered or sign an "intent to enroll" form as [at least] a [half-time full-time] student in the following term. The institution must [keep a written record in its files showing the student has been accepted for enrollment in the upcoming session have documentation in its files that the student was accepted for and had the intention of enrolling full time in the subsequent term prior to actual assignment in a work position] .

PART VI. ADMINISTRATION.

§ 6.1. Responsibility of the council.

The council is authorized to enter into agreements with eligible postsecondary institutions for the development of student jobs and the reimbursement of employers for the Commonwealth's share of students' compensation.

The council shall issue such information sheets it deems necessary and appropriate for administration of the program. The information sheets shall include, but not be limited to, guidelines to establish priority positions, employer share of wages, and application procedures.

§ 6.2 Responsibility of participating institutions.

Participating institutions, under agreement with the council, may:

1. Enter into contracts with eligible employers for employment of students under the program. Such agreements shall be written to ensure employer compliance with the rules and regulations governing the program.

2. Assist in the determination of student eligibility and, in cooperation with eligible employers, arrange for placement of students, ensuring that the placements are consistent with the educational and career

interests of the students, wherever possible, and that the students are sufficiently prepared to succeed in the positions in which they are placed.

3. Arrange for payment of the Commonwealth's share of a student's compensation.

§ 6.3. Employer responsibilities.

A. Before it may participate in the program, an eligible employer shall enter into contract with a postsecondary institution, thereby certifying the employer's eligibility to participate and a willingness to comply with program requirements.

B. Certification of payment to students shall be made in accordance with accounting procedures specified in the institution-employer contracts.

§ 6.4. Reports.

Participating institutions shall supply reports to the council which will include, but not be limited to, information describing the student and employer populations served, the awards received, and the public services rendered through student employment under the program.

§ 6.5. Agreement to participate.

As a requirement of participating in the program, each institution shall certify that it meets the definition of eligible institution and acknowledge responsibility to administer the program according to prescribed rules and regulations.

§ 6.6. Program reviews.

The council periodically will review institutional administrative practices to determine institutional compliance with prescribed rules and regulations. If a review determines that an institution, or an off-campus employer participating in the program under contract with the institution, has failed to comply with regulations and guidelines, the council may suspend or terminate its future participation in the program. In all instances, the council will require an institution to recover and refund to the council any state funds which were expended improperly.

* * * * *

REGISTRAR'S NOTICE: The following regulation is exempted from the Administrative Process Act under the provisions of § 9-6.14:4.1 B 4 of the Code of Virginia, which excludes agency action relating to grants of state or federal funds or property. The regulation is being published for informational purposes only.

Title of Regulation: VR 380-03-03. Virginia Scholars Program Regulations. (REPEALED)

Title of Regulation: VR 380-03-03:1. Virginia Scholars Program Regulations.

Statutory Authority: §§ 23-38.53:1, 23-38.53:2, and 23-38.53:3 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

Sections 23-38.53:1 through 23-38.53:3 of the Code of Virginia authorize the State Council of Higher Education to develop and promulgate regulations for operation of the Virginia Scholars Program (VSP). The major provisions of the VSP regulations are student eligibility and competition requirements, nominations, award selection, awards, and participating four-year institutions.

VR 380-03-03:1. Virginia Scholars Program Regulations.

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:

"Academic year" means the enrollment period which normally extends from late August to May or June.

"Accredited" means an institution approved to confer degrees pursuant to the provisions of § 23-9.5 or §§ 23-265 through 23-276 of the Code of Virginia.

"Award" means the grant to the student specified in these regulations.

"Census date" means the time during an academic year when a count of enrolled students is made for reporting purposes. For semester terms, the census date shall be no sooner than the end of the 14th calendar day from the beginning of the term and no later than the established reporting date. For quarter terms, the census date shall be no sooner than the end of the 10th calendar day from the beginning of the term and no later than the established reporting date. For nonstandard terms, the census date shall be no sooner than the end of the class session that represents the completion of 15% of the class days and no later than the established reporting date.

"Class" means the group of students at the same level (e.g., freshmen) at the university, college, or school within the university or major field of study, as defined by the institution where the student earned academic credits.

"Cost of attendance" means the sum of tuition, fees, room, board, books and supplies, and other education related expenses, as determined by an institution for

purposes of calculating a student's financial need and awarding federal campus-based student aid funds.

"Council" means the State Council of Higher Education for Virginia.

"Domiciliary resident [of Virginia]" means a student who is determined by the council to meet the definition of a domiciliary resident of Virginia eligible for in-state tuition rates, as specified under § 23-7.4 of the Code of Virginia.

"Eligible institution" means an accredited, degree-granting, public or private, nonprofit four-year institution of higher education in Virginia whose primary purpose is to provide collegiate education and not to provide religious training or theological education. A public institution is a college or university that derives its support primarily from the state and is under the control of publicly elected or appointed officials. A private institution is a college or university that derives its support primarily from private sources and is not under the control of publicly elected or appointed officials. Students attending institutions which operate in Commonwealth of Virginia but which issue degrees from a main campus located outside the Commonwealth are not eligible to receive assistance under the Virginia Scholars Program.

"Eligible program" means a curriculum of courses at the undergraduate level that leads to a bachelor's degree and requires at least two academic years (60 semester hours or its equivalent) to complete. Programs that provide religious training or theological education are not eligible courses of study under the Virginia Scholars Program. Programs in the 39.xxxx series, as classified in the National Education Center for Educational Statistics' Classification of Instructional Programs (CIP), are not eligible programs.

"Full-time study" normally means enrollment for at least 12 semester or 12 quarter hours of baccalaureate degree credit courses in each term. The total hours counted shall not include courses audited or taken as remedial work.

"Nonprofit institution" means an institution operated by one or more nonprofit corporations or associations no part of the net earnings of which may inure to the benefit of any individual.

"Program" means the Virginia Scholars Program.

PART II. STUDENT ELIGIBILITY AND COMPETITION REQUIREMENTS.

§ 2.1. Student eligibility.

In order to be considered for an award under the program, a two-year college or high school student must:

1. Be a domiciliary resident of Virginia pursuant to §

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23-7.4 of the Code of Virginia;

2. Demonstrate scholarship and achievement in a secondary or postsecondary institution, as defined in these regulations; and

3. Intend to be enrolled or be accepted for enrollment for full-time study as a regular student in the fall term of the award year in an eligible program at an eligible institution.

§ 2.2. Competition requirements.

A. To enter the competition, high school students must:

1. Achieve semifinalist or finalist standing in the National Merit Scholarship Program, the National Achievement Scholarship Program for Outstanding Negro Students, [Westinghouse Science Program,] or the National Hispanic Scholar Awards Program (after September 1993, the National Hispanic Recognition Program) [, or be a National Council Teachers of English Program winner] ; or

2. Be nominated by the high school principal or the principal's designee. The nomination shall be based primarily on the student's rank in the current year's graduating class and the strength of the student's high school program (i.e., college preparedness). In the case of ties among prospective nominees, the high school principal or designee may take into account other academic and personal achievements of the prospective nominees. Principals of high schools accredited by the state Department of Education, or their designees, shall be requested by the council to assist eligible students in the preparation and filing of applications; and

3. Have filed or plan to file an application for admission to at least one eligible institution for the next academic year.

B. To enter the competition, public two-year college sophomores must:

1. Be nominated by the college president. The nomination shall be based primarily on the strength of the student's academic program (i.e., preparedness for transfer to a four-year institution) and cumulative grade point average. The student with the strongest academic credentials should receive preference for the nomination. In the case of a tie in grade point averages, the college may consider other academic and personal achievements of the candidates; and

2. Have filed an application for admission to at least one eligible institution for the next academic year.

PART III.
NOMINATIONS.

§ 3.1. High schools.

All schools are entitled to submit a minimum of one nomination each year. The maximum number of high school nominations will be based on the number of students in the current year's graduating class, where:

Graduating Class Size	Number of Additional Nominations*
1 - 75	1
76 - 150	2
151 - 225	3
226 - 300	4
300 +	5

* Nominations from high schools shall be in addition to the number of students who qualify to file applications (through the high school) based on their placement as semifinalists or finalists in the [three five] annual national merit competitions.

§ 3.2. Public two-year colleges.

The maximum number of nominees from each public two-year college shall be based on the number of A.A. and A.S. graduates for the preceding year, where:

Number of Graduates	Maximum Number of Nominee
1-50	2
51-100	3
100+	4

§ 3.3. Responsibilities of the parties involved.

The council will provide information about the program and application forms to high schools and public two-year colleges. Each high school or college will ensure that prospective nominees understand the conditions of the award and wish to be nominated before having each student apply. The school or college will complete the institutional section of the application before submitting it with an official transcript to the council.

High school students shall be responsible for securing and completing the student part of the application, submitting the application to the high school, and ensuring that the high school completes and mails the application, together with all required supporting information (e.g., high school transcript, record of ACT or SAT test scores) to the [division superintendent council] before the closing date.

All applications from high school students must be received by the division superintendents, with all required transcripts and test results, no later than the deadline. Likewise, public two-year college nominees must submit applications to the council no later than the deadline. Applications received after the deadlines shall not be

considered unless they are postmarked on or before the deadlines. If an individual's application or supporting materials are not received and a claim is entered that they were lost in the mail, a completed certificate of mailing will be required before any substitute application materials will be accepted. Normally, no late application shall be considered once award recipients have been chosen by the Awards Selection Committee.

PART IV. AWARD SELECTION.

§ 4.1. Award selection criteria.

Awards shall be based on criteria to include standards for assessing scholastic and creative ability and recommendations from high schools and public two-year colleges.

High school recipients will be selected based on:

1. Evaluation of the applicant's high school transcript;
2. ACT or SAT test results;
3. Evaluation of the applicant's personal achievement that shall include but not be limited to honors and work experience; and
4. Evaluation of the school's recommendation.

Public two-year college recipients will be selected based on:

1. Evaluation of college and high school transcripts;
2. Evaluation of personal achievement that shall include but not be limited to honors and work experience; and
3. Evaluation of the college's recommendation.

Selection of recipients shall be based on an applicant's academic record, personal achievement, and school recommendation. To the extent possible, identifying data, including information about the applicant's college plans, sex, and race, shall be removed from the applicants' files before the applications are evaluated. Each applicant's evaluation will be scored as noted below:

	High School Nominees	College Nominees
Academic Record	1-75 Points (transcripts and ACT or SAT test results)	1-75 Points (transcripts only)
Personal Achievement (including student essay and school recommendation)	1-25 Points	1-25 Points

§ 4.2. Award selection process [; high school nominees; two-year college nominees].

[A. High school nominees.

The seven school division superintendents will act as a prescreening committee to select up to 140 applications to forward to the council for consideration of an award. By no later than the established deadline, each superintendent will forward to the council the applications of up to 20 of the region's best students.

A. In October, the Screening Committee, appointed by the council and made up of no less than five experienced institutional admissions officers from the public and private institutions of higher education in Virginia, will meet to select approximately 100 semifinalists.]

In November, the Awards Selection Committee will meet to determine the high school recipients and alternates. The committee, chaired by a member of the council, shall consist of no more than 10 members, at least eight of whom will be faculty of Virginia's public and private nonprofit four-year colleges and universities. The committee will not evaluate incomplete applications. The committee will give consideration to students whose native tongue is not English by considering TOEFL (Test of English as a Foreign Language) scores.

B. [~~Two-year college nominees~~] Applications from two-year college nominees shall be submitted to the council no later than the established deadline. The recipients and alternates will be selected by the Awards Selection Committee described in § 4.2 A of these regulations.

PART V. AWARDS.

§ 5.1. Number and amount.

The maximum number and amount of individual awards under the program shall be in accordance with funds appropriated by the General Assembly in the Appropriation Act. Up to 10% of the initial scholarships awarded each year shall be set aside for qualified sophomores at accredited public two-year, degree-granting colleges who have filed an application for admission to an eligible four-year institution in Virginia and who will complete the A.A. or A.S. degree by the close of the spring term which precedes the academic year for which the award is made. At least 90% of the initial awards shall be made to qualified high school students.

No award under the program shall exceed \$3,000 per academic year. An award received by a student under the program shall not be reduced by the student's receipt of financial aid from any other source unless the award, when added to other financial aid, would enable the student to receive total assistance in excess of the estimated cost of attendance at the institution the student

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attends.

§ 5.2. Duration and renewability.

All initial awards shall be made for one academic year and may be renewed annually for no more than three additional years of full-time study except for transfer recipients whose awards may be renewed for only one additional year. Should such funds be available, awards may be renewed an additional year for students enrolled in recognized five-year undergraduate programs. Renewal decisions shall be made by the council no later than July preceding the academic year in which the renewal award is to be received. The standard for renewal shall be either the student's maintenance of a "B" average or rank in the upper quartile of the student's class as of the close of the academic year.

§ 5.3. Terms and conditions.

In order to receive funds, recipients must maintain full-time enrollment on a continuous basis. Normally, students who fail to do so will forfeit their eligibility to be considered for award renewal [at the close of the academic year]. Exceptions will be made for students who demonstrate that a hardship condition existed which required a temporary reduction in courseload and that the condition will not exist by the opening of the next academic year. It is the student's responsibility to advise the council of any hardship condition no later than July preceding the academic year for which award renewal is sought. Discontinuing full-time enrollment during the year (e.g., dropping to part-time enrollment or withdrawing) may result in a full or partial cancellation of the award for the current year, in accordance with the tuition refund policy of the institution.

Students who are suspended, placed on academic probation, or otherwise fail to meet the institution's standard for satisfactory progress as determined by the institution during any term of the academic year shall be required to repay disbursed program funds and forfeit eligibility for renewal awards. Repayment is in proportion to the amount of tuition refund, if any, which is made by the institution to the student. If no tuition refund is owed to the student, no repayment of program funds is required. The institution shall assist the council in recovering from the student any unauthorized disbursements.

If a student recipient has continuously enrolled full time at an institution (excluding summer sessions) but is enrolled for less than full-time study in the term immediately preceding graduation, the student may be certified as full time by the institution and be eligible to receive that term's portion of his award.

§ 5.4. Use of awards.

Scholarships shall be used only for payment for the costs of attendance for the academic year for which the award is made. Awards are transferable among

participating institutions if the student notifies the council of the transfer prior to enrollment. Recipients who attend classes full time at another institution as part of an exchange program may receive program funds if all the credits earned at the other institution are credited towards the baccalaureate degree from the Virginia institution.

PART VI. PARTICIPATING FOUR-YEAR INSTITUTIONS.

§ 6.1. Responsibilities of participating four-year institutions.

Participating four-year institutions shall:

1. Certify student eligibility;
2. Act, with the student's authorization, as the student's agent to receive and hold program funds for the student; and
3. Maintain individual recipient records and furnish periodic reports and other pertinent information as may be required by the council.

The institution's chief executive officer shall designate one individual at the institution to act as the primary representative of the institution in all matters pertaining to the administration of the program. If there is a change in the primary representative, the chief executive officer shall designate another individual and notify the council within 30 days, in writing, of the change.

After the census date for each term of the academic year, the institution will verify which recipients are enrolled as full-time undergraduate students. Funds for any term in which a recipient does not enroll for full-time study shall not be disbursed. Funds for these students, if already received by the institution in its capacity as the student's fiscal agent, shall be reported to the council as unused funds. Unused funds shall be refunded at the close of the academic year or at the request of the council, whichever occurs earlier.

The representative shall be responsible for securing institutional certifications of each recipient's continuous full-time enrollment, satisfactory academic progress, and end-of-year grade point average (for purposes of determining eligibility for award renewal). The representative shall also be responsible for funds received by the institution in its capacity as the student's fiscal agent.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: The following regulations relating to the Omnibus Technical Amendments are 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 Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Due to the length, the following regulations are not being published; however, a summary is being published in lieu of the full text. The full text of the regulations is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219 and at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 2nd Floor, Richmond, Virginia.

Title of Regulations: State Plan for Medical Assistance Relating to the Omnibus Technical Amendment (HCFA PM 91-4, 91-6, 91-8, 91-9, 91-10, 92-1, 92-2, and 92-4).
 VR 460-01-10 through VR 460-01-15. Section 2, Coverage and Eligibility. (REPEALED)
 VR 460-01-16 and VR 460-01-17. Section 2, Coverage and Eligibility. (REPEALED)
 VR 460-01-19 through VR 460-01-22. Section 3, Services: General Provisions. (REPEALED)
 VR 460-01-24. Section 3, Services: General Provisions. (REPEALED)
 VR 460-01-29.1. Section 3, Services: General Provisions. (REPEALED)
 VR 460-01-31.1 through VR 460-01-31.5 Section 3, Services: General Provisions. (REPEALED)
 VR 460-01-41. Section 4, General Program Administration. (REPEALED)
 VR 460-01-45. Section 4, General Program Administration. (REPEALED)
 VR 460-01-46. Section 4, General Program Administration. (REPEALED)
 VR 460-01-50.1. Section 4, General Program Administration. (REPEALED)
 VR 460-01-51. Section 4, General Program Administration. (REPEALED)
 VR 460-01-54. Section 4, General Program Administration. (REPEALED)
 VR 460-01-55 through VR 460-01-56.6. Section 4, General Program Administration. (REPEALED)
 VR 460-01-58. Section 4, General Program Administration. (REPEALED)
 VR 460-01-66. Section 4, General Program Administration. (REPEALED)
 VR 460-01-86. Section 7, General Provisions. (REPEALED)
 VR 460-01-87. Section 7, General Provisions. (REPEALED)
 VR 460-01-88. Section 7, General Provisions. (REPEALED)
 VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination. (REPEALED)
 VR 460-02-2.6100. Eligibility Conditions and Requirements. (REPEALED)
 VR 460-03-2.6101. Income Eligibility Levels. (REPEALED)
 VR 460-03-2.6102. Resource Levels for the Medically

Needy. (REPEALED)
 VR 460-03-2.6105. Methodologies for Treatment of Income and Resources that Differ from Those of the SSI Program. (REPEALED)
 VR 460-03-2.6110. Consideration of Medicaid Qualifying Trust—Undue Hardship. (REPEALED)
 VR 460-03-4.1922. Methods and Standards for Establishing Payment Rates—Payment of Title XVIII Part A and B Deductible/Coinsurance. (REPEALED)
 VR 460-02-2.8100. Requirements for Advance Directives. (REPEALING) Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 2nd Floor, Richmond, Virginia.

Title of Regulations: State Plan for Medical Assistance Relating to the Omnibus Technical Amendment (HCFA PM 91-4, 91-6, 91-8, 91-9, 91-10, 92-1, 92-2, and 92-4).
 VR 460-01-10:1. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1 (a) through (d)).
 VR 460-01-12:1. Coverage and Conditions of Eligibility (§ 2.2).
 VR 460-01-15:1. Disability (§ 2.5).
 VR 460-01-16:1. Financial Eligibility (§ 2.6).
 VR 460-01-19:1. Amount, Duration, and Scope of Services: Categorically Needy (§ 3.1(a)(1)).
 VR 460-01-20:1. Amount, Duration, and Scope of Services: Medically Needy (§ 3.1(a)(2)).
 VR 460-01-21:1. Amount, Duration, and Scope of Services: Required Special Groups (§ 3.1(a)(3) through (5)).
 VR 460-01-21.1:1. Amount, Duration, and Scope of Services: Limited Coverage for Certain Aliens; Homeless Individuals; Pregnant Women; EPSDT Services; Comparability of Services (§ 3.1(a)(6) through (10)).
 VR 460-01-24:1. Amount, Duration, and Scope of Services: Assurance of Transportation (§ 3.1(c)).
 VR 460-01-29.1. Qualified Disabled and Working Individuals (§ 3.2(a)(1)(ii)).
 VR 460-01-29.2. Other Medicaid Recipients (§ 3.2(a)(1)(iii)).
 VR 460-01-29.3. Deductibles/Coinsurance (§ 3.2(b)).
 VR 460-01-31.1:1. Families Receiving Extended Medicaid Benefits (§ 3.5(a) through (d)).
 VR 460-01-41:1. Free Choice of Providers (§ 4.10).
 VR 460-01-45:1. Required Provider Agreement (§ 4.13).
 VR 460-01-46:1. Utilization/Quality Control (§ 4.14(a)).
 VR 460-01-51.1:1. Utilization/Quality Control (§ 4.14(f)).
 VR 460-01-51:1. Inspection of Care in Intermediate Care Facilities for the Mentally Retarded, Facilities Providing Inpatient Psychiatric Services for Individuals Under 21, and Mental Hospitals (§ 4.15).
 VR 460-01-54:1. Recipient Cost Sharing and Similar Charges (§ 4.18).
 VR 460-01-58:1. Payment for Services (§ 4.19(b)).
 VR 460-01-66:1. Payment for Services (§ 4.19(j)).
 VR 460-01-79.14. Nurse Aide Training and Competency Evaluation for Nursing Facilities (§ 4.38).
 VR 460-01-86:1. Plan Amendments (§ 7.1).
 VR 460-01-87:1. Nondiscrimination (§ 7.2).
 VR 460-01-89. State Governor's Review (§ 7.4).
 VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determinations (Attachment

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2.2-A).
VR 460-03-2.2101. Reasonable Classifications of Individuals Under the Age of 21, 20, 19, and 18 (Supplement 1 to Attachment 2.2-A).
VR 460-02-2.6100.1. Eligibility Conditions and Requirements (Attachment 2.6-A).
VR 460-03-2.6101.1. Income Eligibility Levels (Supplement 1 to Attachment 2.6-A).
VR 460-03-2.6102.1. Resource Levels (Supplement 2 to Attachment 2.6-A).
VR 460-03-2.6105.1. More Restrictive Methods of Treating Resources Than Those of the SSI Program—§ 1902(f) States Only (Supplement 5 to Attachment 2.6-A).
VR 460-03-2.6108.2. More Liberal Methods of Treating Resources Under § 1902(r)(2) of the Act (Supplement 8b of Attachment 2.6-A).
VR 460-03-2.6110.1. Consideration of Medicaid Qualifying Trust—Undue Hardship (Supplement 10 to Attachment 2.6-A).
VR 460-02-3.1100. Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy (Attachment 3.1-A).
VR 460-02-3.1200. Amount, Duration and Scope of Services Provided Medically Needy Group(s)—All (Attachment 3.1-B).
VR 460-03-4.1922.1. Methods and Standards for Establishing Payment Rates—Other Types of Care (Supplement 2 to Attachment 4.19-B).
VR 460-02-4.3410. Requirements for Advance Directives Under State Plans for Medical Assistance (Attachment 4.34-A).
VR 460-04-2.6105. Related Cash Assistance Property Rules.

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

Effective Date: June 16, 1993.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance to include revised preprinted pages issued by HCFA in Program Memoranda 91-4, 91-6, 91-8, 91-9, 91-10, 92-1, 92-2 and 92-4. The sections of the State Plan for Medical Assistance affected by this action are as follows: the Table of Contents; List of Attachments; preprint page Sections 1, 2, 3, 4, 7; Attachment 2.2-A with Supplements 1 and 3; Attachment 2.6-A with Supplements 1, 2, 4, 5, 8b, 10; Attachment 3.1-A; Attachment 3.1-B; Attachment 4.18-D; Attachment 4.18-E; Supplement 2 to Attachment 4.19-B; and Attachment 4.34-A.

HCFA has issued eight Program Memoranda (91-4, 91-6, 91-8, 91-9, 91-10, 92-1, 92-2, and 92-4) which convey revised preprinted pages for the State Plan for Medical Assistance. HCFA has revised these pages to conform with Congressional changes to the Social Security Act contained in the following public laws: Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), Medicare Catastrophic Coverage Act of 1988

(P.L. 100-360), Family Support Act of 1988 (P.L. 100-485), Technical and Miscellaneous Revenue Act of 1988 (P.L. 100-647), and the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239). HCFA requires that preprinted pages reflecting the changes in public law be completed by the states and filed as Plan amendments for formal inclusion in states' plans.

In updating the State Plan pages, HCFA has done several things:

1. Updated language with typographical and syntax errors (some of these errors have been corrected and others left out, i.e., Supplement 9 to Attachment 2.6 A contains language that is already outdated and therefore is not contained in this package leaving the current Supplement 9 in effect) awaiting revision by HCFA for clarity of purpose;
2. Added language which reflects both policy changes and continuation of current policies;
3. Redefined what policies it will allow in certain Supplements.

The services and eligible groups discussed in the attached pages represent no policy or program changes over the existing State Plan approved pages. Most of these new pages represent a smooth transfer of current policy onto new pages that look much like the pages being superseded. Where the newly added language does not represent a policy change (Attachments 3.1 A and 3.1 B, item 5b, medical and surgical services furnished by a dentist), it has been treated as a technical change and is included in this package.

If the added language in the new preprint pages does involve a policy change which DMAS is implementing (i.e., Program Memorandum 91-4, Attachment 3.1 A, item 23 regarding coverage of pediatric or family nurse practitioners' services and reimbursement thereto), then those new federal preprint pages have not been included in this exempt package. Such regulatory issues are being treated separately in their own regulatory package to be promulgated in the near future. If the newly added language provides optional policies which DMAS is not now implementing (i.e., Attachments 4.18 D and E concerning premiums imposed on low income pregnant women and Qualified Disabled and Working Individuals), then those pages have not been included in this package.

In Attachment 2.6 A, Supplement 1, HCFA required the inclusion of the Commonwealth's Aid to Dependent Children financial need standard, payment standard, and maximum payment amounts for Categorically Needy persons. DMAS has provided this information, which already exists in regulations duly promulgated by the Department of Social Services (Standards of Assistance), in the three Appendices included in the

body of Supplement 1.

In Attachment 2.6 A, HCFA specified that Supplement 5 must now contain only those methods of treating resources more restrictive than those of the SSI Program. Previously DMAS had included, with HCFA's approval, SSI-conforming, more restrictive, and more liberal policies. Therefore, while it may appear that Supplement 5 has been substantially rewritten, in reality the SSI-conforming policies have been shifted over to regulations which do not appear in the State Plan but continue to be enforced (VR 460-03-2.6105) as Related Cash Assistance Property Rules.

There are a number of technical corrections being made to the State Plan in this amendment. Technical corrections are being made to update outdated language (i.e., preprint page 58) and to correct previous errors in the State Plan (i.e, Attachment 3.1 B, page 2, item 3 showed the "No limitations" box marked when the "With Limitations" policy has always been applied); to correct HCFA's printing errors as in Attachment 3.1 A, page 1, item 2d (the language in 2c and 2d refers to exactly the same provider group Federally Qualified Health Centers, and therefore is duplicative).

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COMMONWEALTH of VIRGINIA

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

April 29, 1993

Mr. Bruce Kozlowski, Commissioner
Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

RE: Many and Various
VR Numbers as
Listed on File Cover

Omnibus Technical Amendment: HCFA
PM 91-4, 91-6, 91-8, 91-9, 91-10,
92-1, 92-2, and 92-4

Dear Mr. Kozlowski:

This will acknowledge receipt of the above-referenced regulations from the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith
Registrar of Regulations

JWS:jbc

* * * * *

Title of Regulation: VR 460-01-74. Drug Utilization Review Program (§ 4.26).
VR 460-04-4.2600. Drug Utilization Review Program Regulations.

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

Effective Date: June 16, 1993.

Summary:

The purpose of this action is to promulgate permanent regulations consistent with the mandates of OBRA 90 § 4401 and with applicable state laws and to supersede the agency's existing emergency regulation.

The law, as enacted in OBRA 90, requires the states' DUR programs to focus on individuals receiving outpatient drugs who do not reside in a nursing home. Prior to the adoption of the current emergency regulation, DMAS had no DUR program applicable to individuals receiving outpatient drugs.

Congressional support for DUR stems from a longstanding belief that quality health care is more cost-effective than poor quality care. Numerous studies have shown that physicians may not always have the requisite pharmaceutical knowledge and training to prescribe only appropriate medication. In some studies, federal investigators found widespread patient misuse of prescription drugs including overuse, underuse, and lack of compliance with longstanding guidelines for appropriate drug use. The capacity of pharmaceuticals to cause harm has been recognized since the beginning of medicine. Today, drug induced illnesses have become a major health problem and often inappropriate outpatient drug usage leads to the subsequent need for remedial health care services.

OBRA 90 § 4401 placed four key DUR requirements on DMAS:

- implementation of a retrospective DUR
- provision for prospective DUR before the dispensing of prescriptions
- establishment of a DUR board
- development of physician and pharmacist educational interventions and programs.

Retrospective DUR focuses on the therapeutic outcomes of pharmaceutical services. Retrospective DUR applies clinical, therapeutically oriented criteria to pharmacy paid claims data in order to identify potential drug therapy problems (patients whose drug therapy relates to increased risk for drug-induced illnesses) in Medicaid clients. Once a potential

problem has been identified in an individual, the physician and/or pharmacist involved in the patient's drug therapy will be notified and provided with an explanation of why a potential drug therapy problem is thought to exist. It will then be up to the patient's physician and pharmacist to cooperatively modify the patient's drug therapy regimen if such modification is deemed appropriate.

Prospective DUR recognizes and utilizes the pharmacist's ability to maximize therapeutic outcomes. As part of the prospective DUR requirements, the pharmacist is required to review patients' complete drug therapy before each prescription is filled. During the review of drug therapy, pharmacists will be responsible for screening for potential drug therapy problems, utilizing their knowledge as trained professionals and supported by computer-assisted data bases of clinical manuals approved by the Commonwealth's DUR Board.

The federal law established minimum requirements for patient consultation each time a prescription is dispensed, consistent with the pharmacist's professional judgment and applicable state laws. Pharmacists are also required to make a reasonable effort to maintain patient medical history profiles.

OBRA 90 required DMAS to appoint a DUR board. The DUR Board is a group of health care professionals consisting of pharmacists, physicians, and nurses. The board will recommend therapeutic criteria for the retrospective and the prospective DUR program for approval by the Board of Medical Assistance Services (BMAS) and will be active in the design of the educational intervention programs. Currently, the Virginia Medicaid DUR Board consists of 13 members: 5 pharmacists, 6 physicians, and 2 nurses.

The last major requirement of OBRA 90 is that DMAS develop an educational intervention program for physicians and pharmacists. The DUR Board is responsible for identifying common drug therapy problems and DMAS is responsible for developing programs to educate physicians and pharmacists about these problems. Educational interventions can be accomplished through face-to-face discussions with practitioners or through written, oral or electronic reminders.

In April 1993, the Health Care Financing Administration distributed revised preprinted pages for the State Plan for Medical Assistance in Program Memorandum 93-3. The states are required to implement these revised pages in their State Plans. Therefore, these revised pages are being substituted in this final regulation for those which were initially proposed. The differences in these final regulation pages and those which were initially proposed are the addition of citations to the Code of Federal

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Regulations, the specification of the national compendia to be used in establishing predetermined standards, the addition of items I and J on page 74c, as well as technical changes.

VR 460-01-74. Drug Utilization Review Program (§ 4.26).

Citation: 1927(g) [; 42 CFR 456.700]

4.26: Drug Utilization Review Program

[A.1.] The Medicaid agency meets the requirements of Section 1927(g) of the Act for a drug use review (DUR) program for outpatient drug claims.

Citation: 1927(g)(1)(A)

[2.] The DUR program assures that prescriptions for outpatient drugs are:

- Appropriate
- Medically necessary
- [Are] Not likely to result in adverse medical results

[Citation: 1927(g)(1)(A); 42 CFR 456.705(b) and 456.709(b)]

[B.] The DUR program is designed to educate physicians and pharmacists to reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients or associated with specific drugs as well as:

- Potential and actual adverse drug reactions
- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- [Drug Drug-drug] interactions
- Incorrect drug dosage or duration
- Drug allergy interactions
- Clinical abuse/misuse

Citation: 1927(g)(1)(B) [; 42 CFR 456.703(d) and (f)]

[C.] The DUR program shall assess data against predetermined standards [consistent with: whose source materials for their development are consistent with peer-reviewed medical literature which has been critically reviewed by unbiased independent experts and the following compendia:

- American Hospital Formulary Service Drug Information
- United States Pharmacopeia-Drug Information
- [- American Medical Association Drug Evaluations]
- [- The peer reviewed medical literature]
- [- Three compendia specified by the statute]

Citation: 1927(g)(1)(D)

[D.] DUR is not required for drugs dispensed to residents of nursing facilities that are in compliance with drug regimen review procedures set forth in 42 CFR 483.60. [DUR is required for drugs dispensed to residents of nursing facilities which are not in compliance with 42 CFR 483.60. The state has nevertheless chosen to include nursing home drugs in:

- Prospective DUR.
- Retrospective DUR.]

Citation: 1927(g)(2)(A)[(i)]

[E.1.] The DUR program includes prospective review of drug therapy at the point of sale [or point of distribution] before each prescription is filled or delivered to the Medicaid recipient.

Citation: 1927(g)(2)(A)(i) [; 42 CFR 456.705(b)(1) through (7)]

[2.] Prospective DUR includes screening [each prescription filled or delivered to an individual receiving benefits] for potential drug therapy problems due to:

- Therapeutic duplication
- Drug disease contraindications
- [Drug Drug-drug] interactions
- [Drug-interactions with nonprescription or over-the-counter drugs]
- Incorrect dosage or duration [of drug treatment]
- Drug allergy interactions
- Clinical abuse/misuse

Citation: 1927(g)(2)(A)(ii) [; 42 CFR 456.705(c) and (d)]

[3.] Prospective DUR includes counseling for Medicaid recipients based on standards established by state law and maintenance of patient profiles.

Citation: 1927(g)(2)(B) [; 42 CFR 456.709(a)]

[F.1.] The DUR program includes retrospective DUR through its mechanized drug claims processing and information retrieval system or otherwise which undertakes ongoing periodic examination of claims data and other records to identify:

- Patterns of fraud and abuse
- Gross overuse
- Inappropriate or medically unnecessary care [among physicians, pharmacists, Medicaid recipients, or associated with specific drugs or groups of drugs.]

Citation: 1927(g)(2)(C) [; 42 CFR 456.709(b)]

[2.] The DUR program assesses data on drug use

against explicit predetermined standards including but not limited to monitoring for:

- Therapeutic appropriateness
- Overutilization and underutilization
- Appropriate use of generic products
- Therapeutic duplication
- Drug disease contraindications
- [Drug Drug-drug] interactions
- Incorrect dosage/duration [of drug treatment]
- Clinical abuse/misuse

Citation: 1927(g)(2)(D) [; 42 CFR 456.711]

[3.] The DUR program through its state DUR Board, using data provided by the board, provides for active and ongoing educational outreach programs to educate practitioners on common drug therapy problems to improve prescribing and dispensing practices.

Citation: 1927(g)(3)(A) [; 42 CFR 456.716(a)]

[G.1.] The DUR program has established a State DUR Board either:

- Directly
- Contract with a private organization

Citation: 1927(g)(3)(B) [; 42 CFR 456.716(A) and (B)]

[2.] The DUR Board membership includes health professionals (one-third licensed actively practicing pharmacist and one-third but no more than 51% licensed and actively practicing physicians) with knowledge and experience in [one or more of the following]:

- Clinically appropriate prescribing [and dispensing] of covered outpatient drugs.
- [Clinically appropriate dispensing and] monitoring of covered outpatient drugs.
- Drug use review, evaluation and intervention.
- Medical quality assurance.

Citation: 1927(g)(3)(C) [; 42 CFR 456.716(d)]

[3.] The activities of the DUR Board include:

- Retrospective DUR
- Application of standards [as defined in § 1927(g)(2)(C), and]
- Ongoing interventions for physicians and pharmacists targeted toward therapy problems or individuals identified in the course of retrospective DUR

[Citation: 1927(g)(3)(C); 42 CFR 456.711(a) through (d)]

[4. The] interventions include in appropriate instances:

- Information dissemination
- Written, oral, and electronic reminders
- Face-to face discussions
- Intensified monitoring/review of providers/dispensers

Citation: 1927(g)(3)(D) [; 42 CFR 456.712(A) and (B)]

[An annual report is submitted, no later than March 31 of each year, to the Secretary, including a report from its DUR Board, on the DUR program.

H. The state assures that it will prepare and submit an annual report to the secretary, which incorporates a report from the state DUR Board, and that the state will adhere to the plans, steps, and procedures as described in the report.]

The Medicaid agency ensures that predetermined criteria and standards have been recommended by the DUR Board and approved by the BMAS and that they are based upon documentary evidence of the DUR Board. The activities of the DUR Board and the Medicaid fraud control programs are and shall be maintained as separate. The DUR Board shall refer suspected cases of fraud or abuse to the appropriate fraud and abuse control unit within the Medicaid agency.

[Citation: 1927(h)(1); 42 CFR 456.722]

I.1. The state establishes, as its principal means of processing claims for covered outpatient drugs under this title, a point-of-sale electronic claims management system to perform on-line:

- Real time eligibility verification
- Claims data capture
- Adjudication of claims
- Assistance to pharmacists, etc., applying for and receiving payment.

Citation: 1927(g)(2)(A)(i); 42 CFR 456.705(b)

2. Prospective DUR is performed using an electronic point of sale drug claims processing system.

Citation: 1927(j)(2); 42 CFR 456.703(c)

J. Hospitals which dispense covered outpatient drugs are exempted from the drug utilization review requirements of this section when facilities use drug formulary systems and bill the Medicaid program no more than the hospital's purchasing cost for such covered outpatient drugs.]

VR 460-04-4.2600. Drug Utilization Review Program Regulations.

§ 1. Definitions.

The following words and terms, when used in this regulation, shall have the following meanings unless the

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context clearly indicates otherwise:

"Abuse" means (i) use of health services by recipients which is inconsistent with sound fiscal or medical practices and that results in unnecessary costs to the Virginia Medicaid program or in reimbursement for a level of use or a pattern of services that is not medically necessary, or (ii) provider practices which are inconsistent with sound fiscal or medical practices and that result in (a) unnecessary costs to the Virginia Medicaid program, or (b) reimbursement for a level of use or a pattern of services that is not medically necessary or that fails to meet professionally recognized standards for health care.

"Appropriate and medically necessary" means drug prescribing and dispensing practices which conform with the criteria and standards developed pursuant to this regulation and are consistent with the diagnosis or treatment of an identified condition.

"Criteria and standards" means predetermined objective tests established by or approved by the Drug Utilization Review Board for use in both retrospective and prospective screening of the quality and appropriateness of pharmacy services for Medicaid recipients. Objective tests shall include both criteria, which are based upon professional expertise, prior experience, and the professional literature with which the quality, medical necessity, and appropriateness of health care services may be compared, and standards, which are professionally developed expressions of the range of acceptable variation from a criterion.

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Director" means the Director of the Department of Medical Assistance Services.

"Drug [Use Utilization] Review (DUR)" means a formal continuing program for assessing medical and recipients' drug use data against explicit standards and criteria and, as necessary, introducing remedial strategies.

"Drug Utilization Review Board (DUR Board)" means the group of health care professionals appointed by the director and established pursuant to § 1927(g)(3) Title XIX of the Social Security Act.

"Drug Utilization Review Committee (DUR Committee)" means a committee composed of health care professionals who make recommendations for developing and modifying drug therapy review standards or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.

"Exceptional drug use pattern" means a pattern of drug use that differs from the standards and criteria established

pursuant to these regulations.

"Fraud" means any act including intentional deception or misrepresentation that constitutes fraud under applicable federal or state laws.

"OBRA 90" means the Omnibus Budget Reconciliation Act of 1990.

"Patient's agent" means the person or persons selected by the recipient to act on his behalf with regard to the recipient's receipt of Title XIX pharmacy services.

"Patient counseling" means communication of information by the pharmacist, in person whenever practicable, to patients receiving benefits under Title XIX of the Social Security Act or the patient's agent, to improve therapeutic outcomes by encouraging proper use of prescription medications and devices.

"Prospective drug utilization review" means a review by the pharmacist of the prescription medication order and the patient's drug therapy before each prescription is filled. The review shall include an examination of any patient profile (which has been maintained by the pharmacist) to determine the possibility of potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse).

"Restriction" means (i) an administrative limitation imposed by DMAS on a recipient which requires the recipient to obtain access to specific types of health care services only through a designated primary provider or (ii) an administrative limitation imposed on a provider to prohibit participation as a designated primary provider, referral provider, or covering provider for restricted recipients.

"Retrospective drug use review" means the drug use review process that is conducted by DMAS using historic or archived medical or drug use data which may include but is not restricted to patient profiles and historical trends.

§ 2. Authority.

Section 1927 of Title XIX Social Security Act provides the authority for this program.

§ 3. Scope and purpose.

A. DMAS shall implement and conduct a drug use review program (DUR program) for covered drugs prescribed for eligible recipients. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause medically adverse events. The program shall provide for ongoing

retrospective DUR, prospective DUR and an educational outreach program to educate practitioners on common drug therapy problems with the aim of improving prescribing practices. The primary objectives shall be:

1. Improving in the quality of care;
2. Maintaining program integrity (i.e., controlling problems of fraud and benefit abuse); and
3. Conserving program funds and individual expenditures.

B. Certain organized health care settings shall be exempt from the further requirements of retrospective and prospective DUR process as provided for in § 4401 of OBRA 90.

C. The purpose of retrospective drug utilization review shall be to screen for:

1. Monitoring for therapeutic appropriateness;
2. Overutilization and underutilization;
3. Appropriate use of generic products;
4. Therapeutic duplication;
5. Drug-disease contraindications;
6. Drug-drug interactions;
7. Incorrect drug dosage or duration of treatment;
8. Clinical abuse/misuse and fraud, and as necessary; and
9. Introduce to physicians and pharmacists remedial strategies to improve the quality of care rendered to their patients.

D. The purpose of prospective drug utilization review shall be to screen for:

1. Potential drug therapy problems due to therapeutic duplication;
2. Drug-disease contraindications;
3. Drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs);
4. Incorrect drug dosage or duration of drug treatment;
5. Drug-allergy interactions; and
6. Clinical abuse and misuse.

§ 4. Retrospective DUR.

A. The retrospective DUR program shall provide, through drug claims processing and information retrieval systems, for ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits under Title XIX of the Social Security Act.

B. The DUR program shall, on an ongoing basis, assess data on drug use against predetermined criteria and standards which have been approved by the DUR Board.

C. Summary data concerning identified exceptional drug utilization patterns shall be developed and submitted by DMAS to the DUR Board at least quarterly, or as often as monthly if requested by the DUR Board. This data shall include at least a summary of the drug therapy problems most often observed in the course of retrospective reviews, summaries of physician responses to educational interventions, and the results of intensified reviews and monitoring of selected prescribers or dispensers.

§ 5. Prospective DUR [; patient medication profiles; pharmacists' responsibilities; patient counseling; compliance monitoring].

A. [Patient medication profiles:] On and after January 1, 1993, pharmacists shall make a reasonable effort to maintain a patient medication record system for persons covered under Title XIX of the Social Security Act for whom prescriptions are dispensed. For purposes of this regulation, a reasonable effort shall have been made if the information set forth in subdivision 1 of this subsection is requested [by the pharmacist or the pharmacist's designee] from the patient or the patient's agent.

1. A reasonable effort shall be made by the participating pharmacist to obtain, record, and maintain at least the following information on each patient's profile:

- a. Name, address, telephone number;
- b. Date of birth (or [current] age) and gender;
- c. Medical history

(1) Significant patient health problems known to the pharmacist,

(2) Prescription drug reactions or [known] allergies,

(3) A comprehensive list of prescription and nonprescription medications and legend drug administration devices known by the pharmacist to have been used by the patient; and

d. Pharmacist's comments relevant to the patient's drug use, including any failure to accept the

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pharmacist's offer to counsel.

2. Such information may be recorded in any system of records and may be considered by the pharmacist in the exercise of his professional judgment concerning both the offer to counsel and content of counseling. ~~In the absence of a pharmacist's voluntarily maintaining records of patients' acceptance of counseling,~~] DMAS is authorized to ~~[and shall]~~ survey pharmacists' patients in order to determine compliance with and report on the mandates of federal and state law and regulations.

3. The information for patient profiles may be obtained from a patient's prescribing physician, hospital medical records, interviews with the patient, patient's family or agent, or a combination of the above.

4. Patient medication profiles shall be maintained for a period of not less than two years from the date of last entry or as necessary to comply with state or federal law.

B. ~~[Pharmacists' responsibilities under prospective DUR.]~~ Upon receipt of each prescription and before dispensing the medication, a pharmacist shall perform prospective DUR ~~[; consistent with § 54.1-3319 A of the Code,]~~ based on his professional knowledge and the criteria and standards approved by the DUR Board, using the information contained in the patient's profile.

~~[2.]~~ Each pharmacy is required to have DMAS' DUR Board approved criteria readily available for pharmacists to use in performing prospective DUR.

C. ~~[Patient counseling.]~~ Consistent with ~~[§ 54.1-3319 B of the Code, federal law and regulation]~~ a pharmacist ~~[or pharmacy intern]~~ must offer to discuss ~~[in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls]~~ with each individual receiving benefits or the caregiver of such individual ~~[who presents a prescription]~~, matters which in the exercise of the pharmacist's ~~[or pharmacy intern's]~~ professional judgment are deemed to be significant. ~~[An offer to discuss shall be in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls. The offer to counsel shall be made consistent with the requirements in § 54.1-3319 B of the Code of Virginia.]~~

~~[2.]~~ The specific areas of counseling shall include ~~[; but shall not be limited to: those matters listed below that, in the exercise of his professional judgment, the pharmacist considers significant]~~ :

~~[a. 1.]~~ Name and description of the medication;

~~[b. 2.]~~ Dosage form and amount, route of administration, and duration of therapy;

~~[e. 3.]~~ Special directions for preparation, administration and use by the patient as deemed necessary by the pharmacist;

~~[d. 4.]~~ Common or severe side or adverse effects or interactions that may be encountered which may interfere with the proper use of the medication as was intended by the prescriber, and the action required if they occur;

~~[e. 5.]~~ Techniques for self-monitoring drug therapy;

~~[f. 6.]~~ Proper storage;

~~[g. 7.]~~ Prescription refill information;

~~[h. 8.]~~ Action to be taken in the event of a missed dose.

~~[i. 9.]~~ Any other matters the pharmacist considers significant.]

~~[3.]~~ Alternative forms of patient information may be used to supplement, but not replace, oral patient counseling.

~~[4.]~~ A pharmacist shall not be required to provide oral consultation when a patient or a patient's agent refuses the pharmacist's attempt to consult.

~~[5.]~~ When prescriptions are delivered to the patient or patient's agent who resides outside of the local telephone calling area of the pharmacy, the pharmacist shall either provide a toll free telephone number or accept collect calls from such patient or patient's agent.

~~[6. Patient counseling as described herein shall also be required for outpatients of hospitals and institutions when medications are dispensed upon the patient's discharge from the hospital or institution.]~~

~~[7.]~~ Patient counseling as described in this regulation shall not be required for inpatients of a hospital or institution where a nurse or other person authorized by the Commonwealth is administering the medication.

D. ~~[Compliance monitoring for prospective DUR.]~~ An ongoing program shall be developed for the purpose of monitoring pharmacists' compliance with the prospective DUR requirements of these regulations.

~~[2.]~~ The director may establish the compliance monitoring program through agreements with other state agencies, the DUR Board or other organizations.

~~[3.]~~ As determined to be appropriate by DMAS, the methods used to monitor compliance shall include but shall not be limited to:

~~[a. 1.]~~ On-site inspections,

[~~b~~. 2.] Patient surveys,

[~~e~~. 3.] Desk audits, or

[~~d~~. 4.] Retrospective pharmacy profile reviews.

§ 6. Criteria and standards for DUR.

A. The DUR Board shall establish and revise as necessary a list of approved criteria and standards which shall be consistent with the following:

1. Compendia which shall consist of at least the (i) American Hospital Formulary Service Drug Information, (ii) United States Pharmacopeia-Drug Information, (iii) American Medical Association Drug Evaluations;
2. The peer-reviewed medical literature; and
3. Commonly accepted standards of medical practice as used by practitioners across the Commonwealth.

§ 7. Educational program.

A. DMAS shall develop an educational program designed to further educate physicians and pharmacists to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause adverse actions. The purpose of such program shall be to:

1. Identify and reduce the frequency of patterns of fraud, abuse, overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs;
2. Identify and reduce the potential and actual severe adverse reactions to drugs; and
3. Improve prescribing and dispensing practices.

Such program shall include education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions and clinical abuse/misuse.

B. The educational program shall be accomplished through the use of interventions. The interventions shall be directed to physicians and pharmacists and shall address therapy problems or individuals identified in the course of retrospective drug use reviews as having exceptional drug utilization patterns. The educational program shall have at least four types of interventions which shall be used as appropriate. These interventions shall include:

1. Information dissemination sufficient to ensure the ready availability to participating physicians and

pharmacists of information concerning the DUR Board's duties, powers, and basis for its standards;

2. Written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, which is communicated in a manner designed to ensure the privacy of patient-related information;

3. Face-to-face discussions between health care professionals who are experts in appropriate and medically necessary drug therapy and selected prescribers and pharmacists who have been targeted for intervention, including discussion of optimal prescribing, dispensing, or pharmacy care practices, and follow-up face-to-face discussions; and

4. Intensified review or monitoring of selected prescribers or dispensers.

C. DMAS may establish the educational program through contracts with accredited health care educational institutions, state medical societies or state pharmacists associations/societies or other organizations. The educational program will use, but not be limited to, as a basis for its educational activities the compendia and literature referenced in these regulations and data obtained primarily from the retrospective DUR process, and provided by the DUR Board, on common drug therapy problems and other utilization and drug therapy issues listed in these regulations. The educational program shall be based on recommendations submitted by the DUR Board.

D. A report shall be prepared by the DUR Board and submitted to the director at least semi-annually evaluating the success of the interventions, determining if the interventions improved the quality of drug therapy, and making recommendations for modifications in the program, if appropriate.

§ 8. DUR Board.

A. The Director of DMAS shall establish the DUR Board either directly or through a contract with an outside vendor. The DUR Board shall submit recommendations on prospective and retrospective drug use review to the director. The director reserves the right to reject such recommendations and shall so notify the board consistent with federal requirements. The DUR Board shall adhere to all the requirements of client confidentiality with respect to patient specific information.

B. The DUR Board shall consist of 13 members. At least one-third of the members shall be pharmacists. At least one-third but no more than 51% of the members shall be physicians. There shall be at least one but no more than two nurse [~~practitioner~~] members. All pharmacist, physician and nurse [~~practitioner~~] members shall be licensed by the Commonwealth with such licenses in good

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standing. The Director of DMAS shall invite submission of candidates from each of these groups. Other individuals and groups interested in submitting names of candidates for the DUR Board shall indicate their interest to the director in writing. The director shall appoint the physician members from candidates submitted by the Medical Society of Virginia, the Old Dominion Medical Society, and each of the medical schools in the Commonwealth. The director shall appoint the pharmacist members from candidates submitted by the Medical College of Virginia/Virginia Commonwealth University School of Pharmacy, the Virginia Pharmaceutical Association, Virginia Chain Drug Store Association, and the Virginia Society of Consultant Pharmacists. The director shall appoint the nurse [~~practitioner~~] member or members from candidates submitted by the Virginia Nurses Association.

1. At least five of the physicians and pharmacists appointed to the DUR Board shall be licensed and actively practicing.
2. All individuals appointed to the DUR Board shall demonstrate knowledge and expertise in one or more of the following areas:
 - a. The clinically appropriate prescribing of covered outpatient drugs;
 - b. The clinically appropriate dispensing and monitoring of outpatient drugs;
 - c. Drug use review, evaluation, and intervention; and
 - d. Medical quality assurance.
- C. Consistent with its by-laws, the DUR Board members shall serve at the pleasure of the director, for terms established by the director. Vacancies shall be filled in the same manner as the original appointment.
- D. DMAS shall provide staff assistance to the DUR Board and its officers in the routine conduct of its business.
- E. The DUR Board shall have the following duties:

1. The DUR Board shall meet no less than quarterly and, in addition, upon call by the director. A quorum for action by the DUR Board shall be seven voting members.
2. The DUR Board shall elect from among its members a chairperson and a vice-chairperson. Officers may be elected to successive terms.
3. A full record of the board's proceedings shall be kept. The record shall be open to public inspection at all reasonable times consistent with the DMAS' hours of operation.

4. The DUR Board shall establish such rules as are necessary to conduct its business.

5. The DUR Board shall review and approve the retrospective DUR criteria for consistency with the requirements set forth in these regulations.

6. The DUR Board shall establish a listing of criteria and standards for use in prospective drug use reviews. The criteria and standards may include commercial software packages, drug interaction handbooks, and other published and written criteria.

7. The DUR Board shall submit a report at least semi-annually evaluating the success of interventions and making recommendations for modifications to the educational program, if appropriate. The DUR Board shall evaluate the educational program developed by DMAS or DMAS' vendor pursuant to the requirements of these regulations and make recommendations concerning the appropriate mix of intervention approaches.

8. The DUR Board shall prepare a report on an annual basis for submission to [~~the U.S. Secretary of Health and Human Services and~~] the director which shall include a description of the activities of the DUR Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of the interventions on quality of care, [~~and~~] an estimate of the [~~cost~~] costs and] savings generated as a result of such program [and other information specified by the director. DMAS shall prepare and submit, on an annual basis, a report to the U.S. Secretary of Health and Human Services that incorporates the DUR Board's report and conforms to the requirements set forth in federal regulations.]

§ 9. DUR Committee.

- A. The director shall provide for the establishment of a DUR Committee either directly or through a contract with an outside vendor. The DUR Board may serve as the DUR Committee.
- B. The membership of the DUR Committee shall include health care professionals who have recognized knowledge and expertise in one or more of the following:
 1. The clinically appropriate prescribing of covered drugs;
 2. The clinically appropriate dispensing and monitoring of covered drugs;
 3. Drug use review, evaluation, and intervention; and
 4. Medical quality assurance.

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C. The membership of the DUR Committee shall include physicians, pharmacists, and other health care professionals.

D. Activities of the DUR Committee shall include, but not be limited to, the following:

1. The review of patient, pharmacist, and physician exceptional drug utilization profiles generated from retrospective reviews applying knowledge and experience as a professional and the retrospective criteria and standards approved by the DUR Board;

2. Develop and recommend modifications to the prospective and retrospective standards based on clinical experience, new literature findings, and communications from practitioners pursuant to the educational program;

3. In instances where an exceptional drug use pattern is suggestive of fraud or abuse, make referrals in a manner consistent with the rules adopted by the DUR Board to the appropriate intra agency division;

4. Provide technical expertise to assist DMAS staff in the compilation of reports and recommendations to be presented to the DUR Board and the director.

E. The DUR Committee shall adhere to all the requirements of client confidentiality with respect to patient specific information.

§ 10. Exemption of organized health care settings.

A. Covered outpatient drugs dispensed by health maintenance organizations, including those organizations that contract under § 1903(m) of the Act, are not subject to the requirements of this section.

B. A hospital (providing medical assistance under the Commonwealth's plan) that dispenses covered outpatient drugs using drug formulary systems, and bills DMAS no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this regulation.

§ 11. Medical quality assurance for nursing facility residents.

Documentation of drug regimens shall, at a minimum:

1. Be included in a plan of care that must be established and periodically reviewed by a physician;

2. Indicate all drugs administered to the resident in accordance with the plan with specific attention to frequency, quantity, and type; and identify who administered the drug (including full name and title); and

3. Include the drug regimen review prescribed for

nursing facilities in regulations implementing Section 483.60 of Title 42 of the Code of Federal Regulations.

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REGISTRAR'S NOTICE: The amendments to these regulations are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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Due to the length of VR 460-02-2.2100:1 and VR 460-03-2.6101:1, only the amended pages of the regulation and a summary are being published. The full text of the regulations is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, Room 262, Richmond, Virginia.

Title of Regulations: State Plan for Medical Assistance Relating to Income Scales for Indigent Children.

VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination.

VR 460-03-2.6101:1. Income Eligibility Levels.

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

Effective Date: July 1, 1993.

Summary:

The purpose of this action is to comply with the mandate of the 1992 General Assembly in the Appropriation Act with regard to age limitations and income scales from the coverage of indigent children.

This action amends the State Plan for Medical Assistance Services in Attachment 2.2 A for conformance with the 1992 Appropriation Act.

Title XIX of the Social Security Act requires states to use an income criteria equal to 100% of the Federal Poverty Income Guidelines when determining the Medicaid eligibility of children born after September 30, 1983, who have attained age six but who have not attained age 19. This requirement results in the expansion of Medicaid eligibility on a year-by-year basis until by the year 2002 all poor children up through 16 years old will be eligible for Medicaid.

Title XIX § 1905(n)(2) also permits states, at their option, to cover poor children born before September

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30, 1983. The 1992 Appropriations Act (§ 1-88 Item 313(M)) directed that this option be exercised effective July 1, 1992, to expand Medicaid coverage by setting the eligibility income level for children who have attained the age of six but have not attained the age of 13 to 100% of the federal poverty income level and effective July 1, 1993, to raise the upper age limit of the category of indigent children from age 13 to 19.

The 1992 Appropriation Act directed DMAS to establish an income level in FY 93 equal to 100% of the official income poverty line for qualified children who have attained age six but have not attained age 19 and provided this funding: \$9,970,000 (\$4,985,000 GF; \$4,985,000 NGF).

VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination.

Groups Covered.

B. Optional groups other than the medically needy (continued).

Citation: 1902(a)(10)(A)(ii)(IX) and 1902(1)(1)(D) of the Act 1905(n)(2)

☒ 15. The following individuals who are not mandatory categorically needy, who have income that does not exceed the income level (established at an amount up to 100% of the federal poverty level) specified in Supplement 1 of Attachment 2.6-A for a family of the same size.

Children who are born after September 30, 1973, and who have attained six years of age but have not attained age 19.

VR 460-03-2.6101:1. Income Eligibility Levels.

B. Optional categorically needy groups with income related to federal poverty level.

2. Children between ages 6 and 19. The levels for determining income eligibility for groups of children who are born after September 30, 1973, and who have attained six years of age but are under 19 years of age under the provisions of § 1902(1)(2) and § 1905(n)(2) of the Act are as follows:

Based on 100% (no more than 100%) of the official federal income poverty line.

Family Size	Income Level
1	\$ 6,970
2	\$ 9,430
3	\$11,890
4	\$14,350
5	\$16,810
6	\$19,270

7	\$21,730
8	\$24,190
9	\$25,850
10	\$28,230

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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(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: State Plan for Medical Assistance Relating to Home Health Nursing Visits.
VR 460-03-3.1100. Amount, Duration and Scope of Services.

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

Effective Date: July 1, 1993.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance concerning preauthorization of extended home health nursing visits based upon the mandate of the 1993 General Assembly.

The section of the State Plan for Medical Assistance modified by this action is "Amount, Duration, and Scope of Services" (Attachment 3.1 A and B, Supplement 1).

Currently, the plan limits nursing visits to 32 visits annually per service with no provisions for extended nursing services beyond these limitations even if there is medical necessity. Action by the 1993 General Assembly authorizes Medicaid reimbursement for home health nursing visits in excess of the current limit of 32 per year. Visits in excess of the current 32-per-year limit must be determined by the attending physician to be necessary and must be preauthorized by DMAS.

If extended services are determined by the physician to be required, then the home health agency shall request authorization from DMAS for additional services using the "Preauthorization Request Form (DMAS-351). Payment shall not be made for additional services unless authorized by DMAS.

It is anticipated that \$1,168,000 (\$584,000 GF; \$584,000 NGF) will be required to implement this action in FY 94. This amount includes \$928,000 for increased benefits and \$240,000 for additional staff expenses (4 MEL) to conduct preauthorizations and other

administrative costs incurred for visits in excess of current limits. These funds were appropriated by the General Assembly beginning July 1, 1993.

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

General.

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

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

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

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

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

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

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to

the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

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

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

G. Repealed.

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

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

J. The department may exempt portions or all of the

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

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

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

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

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

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

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

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

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

a. 1. Are furnished to outpatients;

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

e. 3. Are furnished by an institution that:

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

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

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

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

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

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

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

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

§ 3. Other laboratory and x-ray services.

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

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

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

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

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

conditions found.

1. A. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

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

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

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

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

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

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

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

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

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

licensed by the Board of Psychology.

E. Any procedure considered experimental is not covered.

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

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

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

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

I. Repealed.

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

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

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

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A. Podiatrists' services.

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

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

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

B. Optometric Optometrists' services.

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

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

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

B. Nursing services provided by a home health agency.

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

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

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

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

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

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

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

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

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

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

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

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

c. Furniture or appliances not defined as medical.

equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

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

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

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

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

h. Home or vehicle modifications.

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

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

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

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

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

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

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

1. Are provided to outpatients;

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

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

§ 10. Dental services.

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

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

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

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control,

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or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

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

§ 11. Physical therapy and related services.

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

11a. Physical Therapy.

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

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

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

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant,

such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

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

11b. Occupational therapy.

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

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

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

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit

shall not be reimbursable.

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

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

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

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

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

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

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

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

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient

settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

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

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

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

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

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

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

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

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

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

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

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

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

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

1. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

2. Legend drugs are covered, with the exception of

anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

3. Repealed.

4. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

5. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

6. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

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

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and

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multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

- (1) Self-care and hygiene skills;
- (2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

(1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.

(2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.

(a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).

(b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

(c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

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

b. Medical social services. Medical social services shall be provided by a social worker who has at

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least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the

plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens (17.e)

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery)

manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;
2. Serious impairment of bodily functions; or
3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

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SECTION I: TRANSACTION TYPE		VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES PRE AUTHORIZATION REQUEST				Please mail request to: ATTN: (Enter from Section V) Dept. of Medical Assistance Services 600 East Broad Street, Suite 1300 Richmond, Virginia 23219																																																																																																							
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DMAS 351 7702

ATTACH DOCUMENTATION OF MEDICAL NECESSITY

INSTRUCTION FORM - PREAUTHORIZATION REQUEST

SECTION I: Transaction Type
 Check appropriate Transaction:
 Original - use for new requests
 Change - use for adjustment of original request
 Delete - use for void of original request
 (Original tracking number must appear on all requests for changes and/or deletions)

SECTION II: Provider Information (Provider who will deliver and bill for requested service)
 Provider Name: Complete Address of Provider
 Provider No.: Complete Provider Number (7 DIGITS)
 Complete Address of Provider
 Identify locality that service is being provided from; (All correspondence will be sent to the address identified on your provider agreement)
 Contact Person: Identify the contact person for DMAS to call if the reviewer has questions
 Telephone No.: Identify the telephone number of the contact person (Including Area Code)

SECTION III: Recipient Information
 Recipient No.: Complete Medicaid Number (12 DIGITS)
 It is your responsibility to verify Recipient Medicaid eligibility before submitting request or providing items
 Recipient: Recipient's Full Name (Last & First Name)
 Address: Complete Address of Recipient (use current address of Medicaid Recipient; include box#, street address, city, state and zip code)
 Telephone No.: Complete Telephone Number of Recipient (Including area code)
 Date of Birth: Full Date of Birth (MONTH, DAY, YEAR)
 Medicare No.: Complete Medicare Number (10 DIGITS)
 Other Insurance: Identify any other insurance that the recipient has (include the name of the insurance carrier and the policy number if available)

SECTION IV: Referral Source Information (If the Provider making a referral for the requested services is not the same Provider who will deliver the service, this section should be completed)
 Provider Name: Full Name of Provider
 Provider No.: Complete Provider Number (7 DIGITS)

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

SECTION VI: Service Category
 Check the appropriate category for which request refers to (Select only 1 service category per request)

SECTION VII: Request Information
 Procedure Code: Procedure code (Revenue, HCPCS, or NDC Code) which identifies the specific service being requested, must be completed for request to be considered
 If specific code is not established, please provide a complete narrative description of service being requested in the Provider Comment Section
 Procedure Modifier: Use appropriate Procedure Modifier; refer to Billing Chapter of the Provider Manual
 Units Requested: Identify Units requested using the established Billing Units; If authorization is needed because more than the established allowable is needed, Only list the amount in excess of the allowable
 Actual Cost: Must be completed when requesting service item that requires DMAS consideration for pricing (Request must include a Description, Manufacture name, Catalog number and copy of Purchase Invoice)
 Total Dollar Requested: Identify Total Dollars requested based on corresponding Procedure Codes and Units Requested
 Dates of Service: Identify Dates of Service for which the corresponding Procedure Codes and Units are Requested

SECTION VIII: DMAS USE ONLY - DO NOT WRITE IN THIS SECTION
 Signature of Provider and Date of Request must appear in Section VII
 ATTACH DOCUMENTATION OF MEDICAL NECESSITY; IF A HOME HEALTH PARTICIPANT, THE HOME HEALTH PLAN OF CARE MUST BE ATTACHED
 MAIL TO: ATTENTION: _____ UNIT
 DMAS - 600 EAST BROAD STREET, SUITE 1300
 RICHMOND, VA 23219

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: VR 615-34-01. Voluntary Registration of [Small] Family Day [Care] Homes—Requirements for Contracting Organizations.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

In 1991 the legislature enacted HB 1862, which established a new Voluntary Registration Program for family day homes that are not required by law to be licensed. The State Board of Social Services then promulgated emergency regulations for the program.

The regulation sets forth the standards that organizations administering the registration must meet. It includes eligibility and qualifications, administrative responsibility, inspection and monitoring, reporting requirements, records, complaints, public access and records, and staff requirements and responsibilities.

The service requirements for contractors are also set forth and include evaluation of applicants, training and technical assistance; issuance of the certificate; collection of fees; complaints and violations; monitoring; information to parents and outreach and public relations; and denials, revocations, nonrenewals and appeals.

The final regulation reflects changes made in response to public comment and changes made in the law by the 1993 General Assembly. The legislature amended and reenacted §§ 63.1-195 and 63.1-196.04 of the Code of Virginia. As a result, the name and definition of a small family day care home is changed to that of a family day home.

Most of the changes are minor and are made for clarity and consistency. The only revision to the regulation which is significant is the inclusion of the new definition of a family day home.

This regulation replaces the emergency regulation and is effective July 1, 1993.

VR 615-34-01. Voluntary Registration of [Small] Family Day [Care] Homes—Requirements for Contracting Organizations.

PART I. INTRODUCTION.

§ 1.1. Definitions.

The following words and terms, when used in these

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

“Certificate of registration” means a document issued by the commissioner to a family day [care] provider, acknowledging that the provider has been certified by the contracting organization [or the department] and has met the Requirements for [Providers (VR 615-35-01) under the] Voluntary Registration [of Small Program for] Family Day [Care] Homes [(VR 615-35-01)] .

“Child” means any individual under 18 years of age.

“Commissioner” means the Commissioner of Social Services.

“Commissioner’s designee” means a designated individual or division within the Department of Social Services who is delegated to act on the commissioner’s behalf in one or more specific responsibilities.

“Contract” means the document signed by the Department of Social Services and the contracting agency.

“Contracting organization” means the agency which has been selected by the Department of Social Services to administer the voluntary registration program for [small] family day [care providers homes] .

“Cooperative agreement” means an agreement between contractors administering the Voluntary Registration Program.

“Denial of certificate of registration” means a refusal by the commissioner to issue a certificate of registration.

“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.

“Division” means Division of Licensing Programs.

“Evaluate” or “evaluation” means the review of a family day care provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the requirements for providers.

[“Family day home” means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the care provider’s own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving

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nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, the family day homes serving six through 12 children, exclusive of the provider's own children, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.]

"Family day [care] provider applicant" or "provider applicant" means a person at least 18 years of age who has applied for a certificate of registration.

"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 dependability,] and (ii) [has a history or pattern of behavior that] demonstrates [a concern for the well-being of others to the extent that] the individual is [considered] suitable [and able] to administer a program for the care, [guidance supervision,] 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 objective references.

"Monitor" or "monitoring visit" means to visit a registered family day [care] provider to review the provider's compliance with applicable requirements.

"Parent" means a 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 family day [care] home.

"Provider" or "registered family day [care] provider" means a person who has received an initial or renewed certificate of registration issued by the commissioner. This provider has primary responsibility in providing care, protection, supervision, and guidance for children [in his private in the registered] home.

"Provider assistant" means a person [at least] 14 years of age [or older] who has been designated by the [family day] provider [and approved by the contracting organization] to assist the provider in [caring for children in the home. The assistant helps the family day care provider in] the care, protection, supervision, and guidance of children in [a private the] home.

"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Registered [small] family day [care] home" means

any [small] family day [care] home which has met the standards for voluntary registration for such homes pursuant to regulations prescribed by the Board of Social Services and which has obtained a certificate of registration from the Commissioner of Social Services.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing [an] application for a certificate of registration.

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Requirements for Contracting Organizations" means [Parts II through IV of these regulations. This section sets forth the] definitions for key terms and the staff and service requirements for contracting organizations.

"Requirements for Providers" means [the] procedures and general information [set forth] for providers operating [small] family day [care] homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration for failure to comply with the applicable requirements for providers.

["Small family day care home" means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day. Further, a family day care home which accepts no more than 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, may also voluntarily register as a small family day care home.]

"Sponsoring organization" refers to an agency administering the USDA's adult and child food nutrition program.

"Staff member" means a person employed by or working for a contracting organization on a regularly scheduled basis. This includes full-time, part-time, and voluntary staff, whether paid or unpaid.

"Substitute provider" means a [regulated] provider who meets the Requirements for [voluntary registration Providers] and who is readily available to provide [substitute] child care [for a registered provider in a registered provider's home or in the substitute provider's home] .

"USDA" means the United States Department of Agriculture.

§ 1.2. Legal authority.

The Code of Virginia was amended and § 63.1-196.04 was added in the 1991 General Assembly session to [include establish] provisions for the voluntary registration of [small] family day [care] homes. [In 1993, § 63.1-196.04 was amended and reenacted to include a new definition of a family day home.]

PART II. ADMINISTRATION OF CONTRACTING ORGANIZATIONS.

§ 2.1. Eligibility and qualifications.

A. Any public or private for-profit or nonprofit organization may apply to become a family day [care] contracting organization, provided the organization meets the eligibility requirements.

B. In order to secure, maintain or renew a contract to provide registration services for [small] family day [care] homes, a contracting organization shall demonstrate its ability to provide for sound facility and finances, permanent records, the collection of fees, the maintenance and provision of reports, officers and agents who have good character and reputation, and as set forth below [: .]

1. The contractor shall maintain adequate facilities as verified by an on-site visit prior to approval of the contract and subsequent inspections and monitoring visits;

2. The contractor shall demonstrate its ability to provide for sound financial management through submission of:

a. Financial statements of the organization for which an independent auditor has rendered an opinion for the most recent fiscal year;

b. A report on the internal control structure of the organization prepared by an independent auditor for the most recent fiscal year, which is free of material weaknesses that affect the fiscal management capabilities of the organization; and

c. Any program audit or review performed by state and federal agencies prepared within the last two years which is free of material weaknesses that affect the fiscal management capabilities of the organization.

3. The contractor shall provide for workers' compensation insurance required by Virginia law and a minimum of \$500,000 liability insurance.

4. Contracting requirements.

a. The contracting organization must meet the

applicable contracting requirements of the commissioner and the State Board of Social Services and the Requirements for Contracting Organizations.

b. The commissioner may give preference to contracting organizations which serve large geographic areas and [to may] limit the number of contractors based on available resources.

c. The commissioner may modify the territories assigned to contractors to better facilitate the administration of the registration program at any time.

5. Training, technical assistance, and information. The organization shall provide training or educational information, technical assistance and consultation to providers (See §§ 4.2 and 4.7).

6. Program [Administration requirements] .

[The contracting organization shall:]

a. Process applications for voluntary registration;

b. Certify family day [care] homes as eligible for registration (as noted in § 4.3);

c. Provide educational information to parents;

d. Maintain a list of substitute providers who are voluntary registrants which shall be given to providers upon request; and

e. Provide information as required under the Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) and Privacy Protection Act (§ 2.1-377 et seq.).

7. Monitoring [and ,] complaints [and referrals] .

[The contracting organization shall:]

a. Monitor [small] family day [care] providers for compliance with health and safety checklist (as described in § 4.6);

b. Respond to routine complaints under the directions of the department (as noted in § 4.5);

c. Make appropriate referrals to state and local agencies; and

d. Encourage provider participation in the USDA food program and refer interested persons to sponsoring organizations.

8. [The contracting organization shall] comply with all performance provisions and level of service provisions as specified in the executed contract.

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C. The contracting organization may elect to provide training and may subcontract for the provision of this training to providers. The contracting organization shall ensure that:

1. An agency under subcontract complies with all applicable Requirements for Contracting Organizations in the delivery of training to the providers;
2. Trainers meet the criteria set forth in § 4.2; and
3. A copy of the subcontract between the contracting organization and the agency subcontracted to perform training shall be maintained on file with the contracting organization.

§ 2.2. Administrative responsibility.

A. A privately operated contracting organization shall have a governing board of at least [five three] members that has the authority to:

1. Set overall administrative and operational policies for the contracting organization.
2. Ensure the financial viability of the contracting organization.
3. Ensure policies pertaining to, but not limited to:
 - a. Program services;
 - b. Personnel recruitment, selection, training and performance evaluation; and
 - c. Data collection and reporting.
4. Oversee fiscal operations, including budget and resource development.

B. The governing board shall delegate responsibility for day-to-day operations to an executive director or administrator. The director shall maintain minutes and attendance records of board meetings for review by the division.

C. A publicly operated contracting organization shall have an advisory committee of at least [five three] people that offers advice and counsel to the contracting organization on the fiscal and administrative operations of the family day [care] registration program. The director shall maintain minutes and attendance records of advisory committee meetings and attendance for review by the division.

D. The governing board of a private contracting organization or the director of a public contracting organization shall appoint [an appeals a review] committee of at least three people [which who] shall:

1. Review recommendations to the commissioner to

deny, revoke or refuse to renew a certificate of registration if requested by the provider;

2. Exclude from its membership staff members responsible for recommending decisions regarding the denial, revocation or refusal to renew a certificate of registration; and

3. Maintain on file documentation of its findings.

E. The contracting organization shall make [available] family day [care] registration services [available] to those who request it.

§ 2.3. Inspection and monitoring of contractors.

A. The department will conduct a comprehensive programmatic inspection of the contracting organization to determine compliance at least once during the contract period.

B. Each contract period shall be two years or as established by the department.

C. An authorized representative of the department may make an announced or unannounced visit at any time during the contracting organization's normal operating hours to monitor the contracting organization and review files, reports or records to determine its compliance with the requirements [;] and to investigate a complaint.

D. The department shall notify the contracting organization in writing whenever the department determines that the contracting organization is operating in violation of any of the Requirements for Contracting Organizations. Notifications will specify the plan of corrective action, including completion date, that must be taken by the contracting organization in order to abate the violation(s).

E. If the contracting organization fails to abate the violation(s) or commits subsequent violations, the contract may be revoked or refused renewal. A contract may also be revoked or refused renewal for:

1. Any activity, policy or conduct that presents a serious or imminent hazard to the health, safety and well-being of a child;
2. Demonstrating of unfitness or inability to operate or to administer the voluntary family day [care] registration program in accordance with the contract;
3. Using fraud in obtaining or maintaining a contract;
4. Any fiscal policies, procedures, or conduct which demonstrate inadequate fiscal management of program funds; or
5. Failing to comply with the cooperative agreement [between among] contractors.

F. If a contracting organization's approval is revoked or refused renewal or if the contract is terminated for any reason, all records related to voluntary registration shall be brought up to date, put in good order, and given to the department within five working days.

§ 2.4. Reporting requirements.

A. The contracting organizations or any staff member shall notify the local department of social services or the state department's Child Protective Services office as specified in Chapter 12 (§ 63.1-248.3 et seq.) of Title 63.1 of the Code of Virginia, whenever there is a reason to suspect that a child has been subjected to abuse or neglect by a provider or any other person.

B. The contracting organization or any staff member shall notify the department immediately of any imminent danger(s) or hazard(s) that threaten the health and safety of children in the provider's home.

C. The contracting organization shall notify the division and the local health department in the provider's municipality of the occurrence of a communicable disease. Such notification shall be made by the next working day after the contracting organization learns of the occurrence.

D. The contracting organization shall notify the central office of the division, orally, of any of the following changes or events by the next working day after the contracting organization learns of their occurrence:

1. Injury that results in the admission of a child to a hospital while in the care of a provider;
2. Lost or missing child when it was necessary to seek assistance of local emergency or police personnel.
3. The death of a child while in the care of a provider;
4. Damage to the contracting organization's offices that affects the operation of family day [care] registration;
5. Any criminal charge(s) and their disposition(s), as specified in § 63.1-198.1 of the Code of Virginia, of the staff of the contracting organization or of a provider, substitute provider, provider assistant, or member of a provider's household;
6. Cancellation of the contracting organization's general/comprehensive liability insurance coverage;
7. Unanticipated permanent or temporary closing of the contracting organization or the registration program; and
8. The provider is exceeding the number of children allowed under registration and is required by law to be licensed.

E. The contracting organization shall notify the division orally within three working days, of any change in office location or the director of the contracting organization or the registration program.

F. The contracting organization shall report statistical data as noted in § 2.5 and specified by the contract.

§ 2.5. Contracting organization records.

A. The contracting organization shall maintain the following records:

1. Administrative records.

- a. The Requirements for Voluntary Registration of [Small] Family Day [Care] Homes;
 - b. The document providing information to parents as specified in § 4.8;
 - c. Staff records, as specified in § 3.1;
 - d. A copy of the contracting organization's insurance policies as specified herein and by the contract;
 - e. Documentation of all funds collected and expended related to the administration of the program, including registration fees;
 - f. A copy of the contracting organization's financial records and audits;
 - g. Documentation of training sessions conducted by the contracting organization or subcontractors and the qualifications of trainers;
 - h. Files documenting recommended denials, and nonrenewals of certificates of registration and appeals as specified in § 4.10;
 - i. A copy of corrective action plans to abate violations of the Requirements for Contracting Organizations;
 - j. A copy of the inspection and monitoring visit reports completed by the department; and
 - k. A copy of the cooperative agreements with other contractors.
2. A copy of contracts between the contracting organization and any subcontracted agency to perform training related to family day [care] registration.
3. Records on providers as specified in Part IV and all documents related to the registration application. Records shall also be kept on providers who have discontinued family day [care] services, and additional information as may be received regarding the provider's compliance with the Requirements for

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Providers.

B. The contracting organization shall submit quarterly narrative and statistical reports including, but not limited to:

1. The number of applications pending and withdrawn;
2. The training information listed in § 4.2 G;
3. Program income and expenditures as noted in § 4.4;
4. Number of monitoring visits, the areas of noncompliance and the results of any complaint investigations; and
5. Narrative reports on progress or impediments related to the attainment of goals and objectives set forth in the contract.

C. The administrative records specified in this section shall be maintained by the contracting organization for three calendar years.

§ 2.6. Complaints against a contracting organization.

A. Complaints against a contracting organization shall be investigated by the department. An investigation shall be conducted to determine compliance with the contract and the Requirements for Contracting Organizations. The contracting organization shall be notified of the findings by the department.

B. If the contracting organization wishes to appeal an administrative decision that does not result in revocation of the contract by the department, the contractor may follow an informal appeal process as outlined in the Department of Social Services, Division of Licensing Programs, General Procedures and Information for Licensure.

C. The contracting organization may appeal a decision by the department resulting in a revocation decision in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

§ 2.7. Public access to records.

A. The contracting organization shall make the following files available for public review:

1. Active applications for a certificate of registration and related materials or documentation;
2. List of registered providers updated quarterly;
3. Correspondence between the contracting organization and the provider or other parties in matters pertaining to the contracting organization's monitoring or registration of the provider;

4. Evaluation and monitoring reports, where applicable, reflecting the results of the contracting organization's evaluation and monitoring of the provider;

5. Forms and other standard documents used to collect routine data on the provider as part of the provider's record of compliance with the Requirements for Providers;

6. Enforcement letters from the contracting organization requiring abatement of violations of the Requirements for Providers;

7. Correspondence to the contracting organization from the department regarding enforcement actions against the provider;

8. Chronological lists of events about the provider on compliance and enforcement matters;

9. Completed complaint investigations reports, except child abuse or neglect investigations or other information restricted by the requirements of Chapter 12 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia or other state law; and

10. Any other documents, materials, reports, or correspondence that would normally be included as part of the public record shall remain on file for three years.

B. The contracting organization shall keep confidential and not part of the public record the following:

1. Records, reports or correspondence that pertain to child abuse or neglect investigations involving enrolled children and any other information pertaining to children, parents or providers that are restricted from public access under Chapter 12 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia or other state law;

2. Records, reports, correspondence or forms containing names of enrolled children and their parents;

3. Confidential information with regard to specific contracting organization personnel;

4. Any items that deal with reports of inspection or complaint investigations that are still in progress; and

5. Other material required by state law to be maintained as confidential.

C. If a contracting organization has a question about whether information may be released to the public, the executive director should consult the organization's attorney and a representative of the department.

D. Contractors may not charge [~~the public~~] more than provided under the Freedom of Information Act (§ 2.1-340 et seq. of the Code of Virginia) [for copies of public information] .

[E. The contracting organization shall maintain on file for the executive director or administrator and for each staff member the information described in Part III.]

PART III. STAFF REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.

§ 3.1. General staff requirements.

A. The executive director or administrator, board members, corporate officers, or partners and every staff member of a contracting organization shall be of good character and reputation. Staff shall possess ability to provide services to parents and providers, as specified in these requirements. The director, board members, and corporate officers shall possess ability to direct the organization.

B. Prior to the employment or utilization of the executive director or administrator or a staff member directly involved with administering the registration program, the contracting organization shall require the applicant for executive director or administrator and each staff applicant to complete and sign an application for employment, indicating the applicant's:

1. Name, address and telephone number;
2. Education and work experience; and
3. Criminal records check and Child Protective Services Central Registry clearance.

C. Prior to the executive director's or administrator's or any staff member's employment, the contracting organization shall obtain two references, either in writing or orally, from former employers or other persons who have knowledge of the applicant's work experience, education and character. If the reference is given orally, documentation shall be on file with comments. If staff is already employed, references shall be provided within 20 days of signing the contract with the department.

D. The executive director or administrator and every staff member shall notify the contracting organization by the end of the contracting organization's next working day of any criminal convictions or charges filed during their employment or utilization by the contracting organization.

E. Evidence of conviction for crimes of violence, child abuse or neglect or other crimes which may relate adversely to the operation of the contracting organization shall be among those actions that are considered in determining an individual's fitness and suitability to serve as executive director or administrator or as a staff

member.

F. Except for crimes specified in § 63.1-198.1 of the Code of Virginia, evidence of conviction of a crime by an individual serving as executive director or administrator, corporate officer, or partner or as a staff member shall not automatically result in the cancellation of the contract. Such determination shall be made on a case-by-case basis by the commissioner or the commissioner's designee.

[G. The contracting organization shall maintain on file for the executive director or administrator and for each staff member the information described in this section.]

§ 3.2. Types and responsibilities of staff.

A. Each contracting organization shall have an executive director or administrator who is responsible for the overall management and administration of the contracting organization's family day [care] registration program.

B. The contracting organization shall have sufficient staff to carry out the family day [care] registration program.

C. The executive director [~~or administrator~~] may also serve as a staff member if [~~he the administrator~~] has no role in approving providers for the USDA food program. Likewise, staff involved in approving homes for USDA shall not approve homes for registration [unless an alternative arrangement is approved by the division] .

D. The executive director or administrator shall ensure:

1. That the contracting organization operates in compliance with all applicable Requirements for Contracting Organizations;
2. That each provider operates in compliance with all applicable Requirements for Providers;
3. The supervision of all staff members assigned to the contracting organization's family day [care] registration program;
4. The development and implementation of policies and procedures for the day-to-day operation of the contracting organization's family day [care] registration program;
5. The orientation of staff members to the policies and procedures of the contracting organizations;
6. The development and maintenance of administrative, fiscal and program records; and
7. The development and implementation of a program of outreach, public relations, and technical assistance as directed by the division.

§ 3.3. Staff qualifications.

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A. The executive director or administrator shall possess a bachelor's degree and a minimum of two years of managerial or supervisory experience. The degree and experience shall be in the field of human services, child care services, child development, education, psychology, nursing, social work, or business.

B. Staff members responsible for provider evaluation, monitoring, support, technical assistance and training shall possess the following:

1. An associate's degree in human services, child care services, child development, education, nursing or social work and one year [professional] experience working with children; or

2. A high school diploma or General Education Development (GED) diploma and three years of experience in the field of human services, child care services, child development, education, nursing, psychology, or social work and at least one year of which must be [professional] experience working directly with children.

§ 3.4. Staff training.

The executive director or administrator shall:

1. Provide staff members with access to a copy of the Requirements for Contracting Organizations and the Requirements for Providers.

2. Ensure that staff, as appropriate, are trained in:

- a. Recognizing and reporting child abuse or neglect;
- b. Evaluating provider applicants as specified in § 4.1;
- c. Conducting or securing training sessions for providers when requested;
- d. Monitoring providers as specified in § 4.6;
- e. Providing technical assistance to providers as specified in § 4.7;
- f. Procedures for identification and referral of special needs children; and
- g. Recruiting providers for registration and promoting the program through public relations as directed or approved by the division.

3. Ensure staff designated to conduct training meet the qualifications set forth for trainers in § 4.2.

PART IV. SERVICE REQUIREMENTS FOR CONTRACTING ORGANIZATIONS.

§ 4.1. Evaluation of family day [care] provider applicants.

A. The contracting organization shall provide to each applicant for a certificate of registration the following information:

1. A voluntary registration provider application, including the health and safety checklist;
2. A request form for a criminal records check and a Child Protective Services (CPS) Central Registry clearance;
3. A sworn disclosure statement;
4. A copy of the Requirements for Providers;
5. A list of sponsoring organizations for the USDA food program [if the registrant is not a participant and expresses interest in the program] ;
6. A list of all contracting organizations; and
7. Other forms and information as required by the division.

B. The contracting organization's evaluation of each applicant shall include a review of the information required on the application for registration and other program requirements.

C. The contracting organization shall evaluate each provider prior to recommending certification, denial or refusal to renew the provider's certificate of registration.

D. The contracting organization shall visit each applicant's home as described in § 4.6 prior to recommending the issuance of the certificate of registration and at renewal to evaluate the applicant's compliance with the Requirements for Providers.

E. A renewal application packet will be sent to the provider no later than 90 days prior to the expiration of the current certificate of registration.

F. If needed, the provider and contracting organization shall complete a corrective action plan during the initial home visit. This will briefly describe any standard not met, the action to be taken to meet it, the date by which it will be completed, and the signature of the provider.

§ 4.2. Training of family day [care] providers.

A. The contracting organization shall supply to each provider:

1. Prior to recommending the issuance of a certificate of registration, a copy of appropriate informational materials supplied by the department; and

2. From time to time, any other available materials that may assist the provider in operating a [~~small~~] family day [~~care~~] home.

B. The contracting organization shall ensure training or educational materials are available and easily accessible to providers prior to recommending the issuance of a certificate of registration and after being awarded the certificate by the commissioner.

C. Training or educational materials shall include information regarding, but not limited to, the following subjects:

1. Child development;
2. Discipline;
3. Safety, first aid and emergency evacuation procedures;
4. Health and sanitation;
5. Nutrition;
6. Program activities;
7. Child abuse detection and prevention;
8. Parent-provider communication;
9. Injury prevention; and
10. Special needs training.

D. Where training is provided, sessions for provider applicants shall include group or individual instruction by persons with expertise in the areas of instruction. All trainers used, including those under subcontract, shall have the following education and experience.

1. A.A., B.A., B.S., or advanced degree in early childhood education (ECE), child development, home economics, psychology, nursing, social work, special education or related field from an accredited college or university (the degree must directly relate to the area of training); or
2. A valid professional credential (or certification) from an early childhood education or child development related organization (such as Child Development Associate Credential or National Association for Family Day Care Accreditation); or
3. Have at least four years of substantial compliance with applicable regulations, in a child care setting working directly with children as a caregiver, teacher, child life worker, social worker, or in a similar role in a program serving children of the age represented in the course, seminar or workshop; and

4. At least 12 college level credits in courses directly related to child growth and development and three professional references. A professional reference may not be from a relative, and must directly relate to the training topics for which the applicant is applying.

E. Alternatives to the education or experience requirements in § 4.2 D will be considered on an individual basis for specialized subject matter that is relevant for child care providers but which does not require academic preparation in early childhood education. The applicant must provide the following documentation for consideration:

1. A written description of education or experience related to the field of expertise under consideration; and
2. A brief explanation of how the area of expertise relates to early childhood care.

F. Training may be supplemented by:

1. Printed materials;
2. Television broadcasts; or
3. Audio-visual materials.

[~~G. Training provided by organizations other than the contractor and publicized by the contractor through the mediums described in subsection F of this section shall meet the criteria for quality training set forth in subsection D.]~~

[~~H. G.]~~ The contracting organization shall maintain on file documentation of training it provides, including for each training session the names of the participants, the goals, a description of the information presented, the date the training occurred and an evaluation.

§ 4.3. Issuance of the certificate of registration.

A. If the contracting organization determines that the provider applicant is in compliance with all applicable requirements for providers, the contracting organization shall certify the home as eligible for registration and submit a recommendation on forms prescribed by the commissioner. Upon receipt, the commissioner shall evaluate the recommendation for certification and may register the [~~small~~] family day [~~care~~] home.

B. The certificate of registration shall be issued by the commissioner to a specific provider at a specific location and shall not be transferable.

C. A provider who has been denied a certificate of registration or has had a certificate revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action unless the waiting period is

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waived by the commissioner as noted in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

§ 4.4. Collection of registration fees.

A. The contracting organization shall process all applications for a certificate of registration without regard to the applicant's race, national origin, religion, sex, or age (provider must be at least 18 [years of age] to register).

B. The contracting organization [~~shall~~ may] collect a nonrefundable biennial registration fee [which shall] not [~~to~~] exceed \$50 from the provider applicant and with each application for renewal of the certificate of registration. The fee shall be paid in the form of check or money order made payable to the contracting organization. This does not include the fee for the criminal records check, CPS Central Registry clearance, or the tuberculosis test.

C. The contracting organization may assess a fee not to exceed \$10 for an additional home visit if corrective action is needed after the initial home visit and as specified in the Requirements for Providers.

D. An additional fee shall not be required if a minor change in the information collected occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

E. The contracting organization shall retain the funds generated by registration fees and shall maintain a record of the registration fees collected from the providers, in accordance with department's contract requirements.

F. The contracting organization shall ensure and document that the registration fees collected are directed to the maintenance or improvement of the contracting organization's voluntary registration program.

§ 4.5. Complaints and violations.

A. Complaints against a provider and alleged violations by a provider which are directed to the contracting organization shall be referred to the appropriate agency within a timeframe specified by the division. This may include referrals to Child Protective Services, health and safety officials, the appropriate sponsoring organization or USDA office, or the department's regional licensing office if the complaint alleges that the home is subject to licensure.

B. Complaints shall also be received by or referred to the contracting organization with procedures developed under the direction of the department.

C. If, during the course of investigating a complaint, the commissioner determines that it is necessary to revoke a certificate of registration, the contracting organization and the commissioner shall take action in accordance with §

4.10.

§ 4.6. Monitoring of family day [care] providers.

A. The contracting organization shall monitor, unannounced, at least 10% of the providers registered who are not participating in the food program every two years to evaluate compliance with the Requirements for Providers. The USDA requires that providers participating in the food program be monitored three times a year and recommends one of these visits be unannounced.

B. The contractor shall visit the home during the hours in which care is being provided to children by the provider.

C. The contracting organization shall maintain on file a written report of each monitoring visit to the provider's home.

§ 4.7. Technical assistance.

A. The contracting organization shall provide technical assistance to registered providers and parents of enrolled children upon request. This assistance shall include responding to providers' and parents' questions and concerns regarding family day care and referrals to appropriate agencies.

B. The contracting organization shall maintain a listing of support services available in the community and shall refer providers and parents of enrolled children upon request.

C. The contracting organization shall make the following information available to providers:

1. A list of reportable communicable diseases;
2. A list of physical symptoms or conditions that indicate a child may have a communicable disease;
3. Guidelines for administration of medication;
4. Guidelines for the care of sick children;
5. Guidelines for positive discipline;
6. A list of services to which a provider is entitled, including:
 - a. Participating in training sessions offered by or through the contracting organization; and
 - b. Receiving technical assistance from the contracting organization;
7. Resources for children with a potential or actual handicapping condition. This may include a toll free number for early intervention (1-800-234-1448) or:

a. Informing the parent of the child's rights to a special education program and related services;

b. Referring the parent to the Virginia Department of Education for a possible comprehensive evaluation and individual service plan development for the child; and

c. Referring the parent to the health clinic in the local health department for a possible comprehensive medical evaluation for the child;

8. Information on how to identify children who are victims of abuse and neglect and who to contact if it is suspected.

§ 4.8. Information to parents.

A. The contracting organization shall supply to providers sufficient copies of a written information to parents statement for the parents of all enrolled children which indicates:

1. The provider has received a certificate of registration;

2. The provider is required to comply with the Requirements of Providers;

3. The scope and limitations of voluntary registration;

4. The name, address and phone number of the contractor so that parents may receive a copy of the Requirements for Providers by contacting the contracting organizations;

5. Parents may report alleged violations of the Requirements for Providers to the local contracting organizations and complaints about the contractor to the division;

6. Any person providing full-time or part-time child care for pay on a regular basis who has reason to suspect that a child is an abused or neglected child is required by state law to report the matter immediately to the local social services department (except as prescribed in § 63.1-248.3 of the Code of Virginia) or to call the statewide toll free hotline (1-800-552-7096/TDD). Further, any person may report suspected abuse and neglect as set forth in § 63.1-248.4 of the Code of Virginia;

7. Parents of enrolled children shall be permitted to visit the family day [care] home at any time their child(ren) is present without having to secure the prior approval of the provider. Parents may be restricted to visit only those areas of the home designated for family day care;

8. The operation of the family day [care] home is subject to unannounced monitoring visits by the

contracting organization and monitoring of a sample of registered family day homes by the department; [and]

9. Parents may request that the contracting organization provide technical assistance to the parent or the provider, and referrals to appropriate community resources [; and]

[10. Parents are advised to ask their provider whether they carry liability insurance.]

§ 4.9. Outreach and public relations.

The contracting organization will, in partnership with the department, disseminate registration information provided by the state to agencies, organizations and the general public.

§ 4.10. Denials, revocations, refusals to renew, provider appeals procedures.

A. The contracting organization may recommend to the commissioner that a provider's certificate of registration be denied, revoked, or refused renewal for cause, including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;

2. Use of fraud or misrepresentation in obtaining a certificate of registration or in the subsequent operation of the family day [care] home;

3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day [care] home;

4. Refusal to furnish the contracting organization [or the department] with records;

5. Refusal to permit immediate admission to the family day [care] home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department [during normal hours of operation or] when any enrolled child is present; or

6. Documentation maintained by a contracting organization or the department that a provider's certificate of registration has been denied, revoked, or refused renewal by the commissioner during the six months prior to the date the application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the

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violation(s) first orally and then in writing, and [, as appropriate,] shall afford the provider an opportunity to abate the violation(s) within a timeframe agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation situations where children are at risk of abuse, neglect or serious harm or injury.

C. The contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal if the provider fails to abate the violation(s) within the agreed upon timeframe or commits a subsequent violation. A statement referencing the standard violated shall be included with the recommendation.

D. Upon notification of the contracting organization's intent to recommend to the commissioner that a certificate of registration be denied, revoked or refused renewal, the contracting organization shall give written notice to the provider within five calendar days, specifying the reason for such action, either by hand delivery or by certified mail with return receipt requested. The notice shall afford the provider an opportunity to request a review in writing within 15 calendar days after receipt of notification before the contracting organization's review committee.

E. If the provider requests a review, the contracting organization's review committee shall consider each recommendation to deny, revoke, or refuse renewal within 15 calendar days of receiving the provider's request and shall afford the provider an opportunity to be heard. The review committee shall issue a written report of its findings to the provider and the commissioner's designee within five working days after completing its review.

F. The contracting organization shall submit its recommendation to the commissioner's designee who shall make a decision to accept or refuse the recommendation.

G. If the commissioner's designee upholds the recommendation to deny, revoke, or refuse renewal, the commissioner's designee shall inform the provider that the decision may be appealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and a hearing may be requested in writing within 15 calendar days after receipt of the notification of the decision.

H. After a hearing, the commissioner shall issue the final order and shall notify the provider that this order may be appealed in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

I. If the provider's certificate of registration is revoked or refused renewal by the commissioner or the commissioner's designee, the contracting organization shall request that the provider notify the parent of each child enrolled in the family day [care] home within 10 calendar days of such action.

MODEL

REGISTRATION STANDARDS
[SMALL] FAMILY DAY [CARE] HOME
RECOMMENDATION TO DENY,
REVOKE, OR REFUSE TO RENEW
CERTIFICATE OF REGISTRATION
03/22/93

Provider Name: _____
Provider Address: _____

CHECK ONE OF THE FOLLOWING:

- Deny
- Revoke
- Refuse To Renew

REASON (specifically state the standard(s) not met):

Authorized Agency Representative

Contracting Organization

Date

Mail to:

Voluntary Registration Technician
Division of Licensing Programs
Virginia Department of Social Services
[6007 Discovery Drive] 730 East Broad Street
Richmond, VA [23229-8699/23219]

*** ATTACH PART I AND II OF THE COMPLETED APPLICATION FORM ***

032-05-209
[9/92/93]

Appendix B

MODEL

REGISTRATION STANDARDS
[SMALL] FAMILY DAY [CARE] HOME
RECOMMENDATION FOR CERTIFICATE OF REGISTRATION
03/22/93

Provider Name: _____
Provider Address: _____

Effective Dates: ____/____/____ through ____/____/____

Stipulations:

I certify that the Standards for Voluntary Registration of [Small] Family Day
[Care] Homes have been reviewed at the home named above and that these
requirements have been met by the provider. I recommend a Certificate of
Registration be issued.

Executive Director

Contracting Organization

Date

Mail to:

Voluntary Registration Technician
Division of Licensing Programs
Virginia Department of Social Services
[6007 Discovery Drive] 730 East Broad Street
Richmond, VA [23229-8699/23219]

032-05-209
[9/92/93]

Appendix A

Final Regulations

* * * * *

Title of Regulation: VR 615-35-01. Voluntary Registration of [~~Small~~] Family Day [~~Care~~] Homes—Requirements for Providers.

Statutory Authority: §§ 63.1-25 and 63.1-196.04 C of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The 1993 General Assembly amended and reenacted §§ 63.1-195 and 63.1-196.04 of the Code of Virginia and, as a result, the name and definition of a family day care home is changed to that of a family day home. Subsequently, the State Board of Social Services is mandated to promulgate regulations to implement provisions for the voluntary registration of family day homes that are not required by law to be licensed.

This final regulation reflects changes made in the licensing statute in response to mandates from the 1993 General Assembly as well as changes made due to public comment. Substantial changes to the regulation are made in the following sections: definitions, reasons for denials, revocations, refusals to renew and provider appeals procedures, provider record requirements, staffing requirements, and health and safety checklist criteria.

The regulation establishes registration procedures and general information for providers of family day homes who voluntarily register. The following issues are addressed which affect providers operating family day homes who voluntarily register: provider eligibility, application procedures, registration fees, issuance of certificates of registration, renewals, denials, revocations and refusals to review certificates of registration, appeals procedures, reporting and record-keeping requirements, staffing requirements, including adult-child ratios, and self-administered health and safety checklist requirements.

This regulation replaces the emergency regulation.

VR 615-35-01. Voluntary Registration of [~~Small~~] Family Day [~~Care~~] Homes—Requirements for Providers.

PART I INTRODUCTION.

§ 1.1. Definitions.

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

“Adult” means any individual 18 years of age or older.

“Age appropriate” means suitable to the chronological age range and developmental characteristics of a specific group of children.

“Age groups”

“Infant” means children from birth to 16 months.

“Toddler” means children from 16 months to 31 months.

“Preschooler” means children from 31 months up to the age of eligibility to be enrolled in kindergarten or an equivalent program.

“School age” means children who are eligible to be enrolled in kindergarten or attend public school.

“Age of eligibility to attend public school” means five years of age or older by September 30.

“Care, protection and guidance” means responsibility assumed by a [~~small~~] family day [~~care~~] home provider for children receiving care in the home, whether they are related or unrelated to the provider.

“Certificate of registration” means a document issued by the commissioner to a family day [~~care~~] provider, acknowledging that the provider has been certified by the contracting organization or the department and has met the Requirements for Voluntary Registration of [~~Small~~] Family Day [~~Care~~] Homes. [(VR 615-35-01)].

“Child” means any individual under 18 years of age.

“Commissioner” means the Commissioner of Social Services.

“Commissioner’s designee” means a designated individual or division within the Department of Social Services that is delegated to act on the commissioner’s behalf in one or more specific responsibilities.

“Contracting organization” means the agency which has contracted with the Department of Social Services to administer the voluntary registration program for [~~small~~] family day [~~care providers homes~~] .

“Denial of a certificate of registration” means a refusal by the commissioner to issue an initial certificate of registration.

“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.

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"Evaluate" or "evaluation" means the review of a family day [care] provider by a contracting organization upon receipt of an application for a certificate of registration to verify that the applicant meets the Requirements for Providers.

["Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, family day home serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.]

"Family day [care] provider applicant" or "provider applicant" means a person 18 years of age or older who has applied for a certificate of registration.

"Monitor" or "monitoring visit" means to visit a registered family day [care] provider and to review the provider's compliance with the applicable requirements described in the Requirements for Providers.

"Parent" means a 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 family day [care] home.

"Physician" means a person licensed to practice medicine.

"Provider" or "registered family day [care] provider" means a person who has received an initial or renewed certificate of registration issued by the commissioner. This provider has primary responsibility [in for] providing care, protection, supervision, and guidance [for to] the children in [his the] registered home.

"Provider assistant" means a person 14 years of age or older who has been designated by the [family day] provider and approved by the contracting organization to assist the provider [in caring for children in the home. The assistant helps the family day care provider] in the care, protection, supervision, and guidance of children in [a private the] home.

"Refusal to renew a certificate of registration" means the nonissuance of a certificate of registration by the commissioner after the expiration of the existing

certificate of registration.

"Registration fee" means the payment to a contracting organization by a provider or applicant upon filing an application for a certificate of registration.

"Registered [small] family day [care] home" means any [small] family day [care] home which has met the standards for voluntary registration for such homes pursuant to regulations [prescribed promulgated] by the [State] Board of Social Services and which has obtained a certificate of registration from the Commissioner [of Social Services through a contracting organization] .

"Renewal of a certificate of registration" means the issuance of a certificate of registration by the commissioner after the expiration of the existing certificate of registration.

"Requirements for Providers" [sets forth means the] procedures and general information [set forth] for providers operating [small] family day [care] homes who voluntarily register. This includes staffing requirements and a self-administered health and safety checklist.

"Revocation of a certificate of registration" means the removal of a provider's current certificate of registration by the commissioner for failure to comply with the applicable Requirements for Providers.

["Small family day care home" means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only part of the day. Further, a family day care home which accepts no more than 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, may also voluntarily register as a small family day care home.

"Substitute provider" means a [regulated] provider who meets the Requirements for Providers and [who] is readily available to provide [child care for a registered provider substitute child care in a registered provider's home or in the substitute provider's home] .

"USDA" means United States Department of Agriculture.

§ 1.2. Legal authority.

[The Code of Virginia was amended and § 63.1-196.04 was added Section 63.1-196.04 of the Code of Virginia was amended and reenacted] in the [1991 1993] General Assembly session to [include establish] provisions for the voluntary registration of [small] family day [care] homes.

PART II. PROVIDER REGISTRATION AND GENERAL

Final Regulations

PROCEDURES.

§ 2.1. Provider eligibility.

A. A family day [care] provider and substitute provider shall be 18 years of age or older.

B. A family day [care] assistant shall be 14 years of age or older.

C. A family day [care] provider, assistant(s) and substitute provider shall be able to read, write, understand and carry out the responsibilities in the Requirements for Providers.

D. A family day [care] provider and substitute provider shall live in a county, city, or town that does not have a local ordinance for the regulation or licensure of family day [care] homes.

E. A family day [care] provider shall not be required by law to be licensed.

§ 2.2. Application for registration.

A. A family day [care] provider applicant for a certificate of registration shall submit to the contracting organization a completed application form, which shall include, but not be limited to:

1. The health and safety checklist and statements of assurance as noted in Part III.
2. A tuberculosis test report as noted in subsection C of this section.
3. A criminal records check and child protective services central registry clearance as indicated in subsection D of this section.
4. A sworn disclosure statement as noted in subsection D of this section.
5. General information as noted in subsection B of this section.

B. The provider shall also indicate [his preferences a preference] as to whether:

1. The provider applicant is interested in participating in the USDA food program (if the registrant is not currently participating);
2. The provider applicant is willing and able to serve as a substitute provider (after the primary provider obtains consent from parents of enrolled children) and is interested in being included on the substitute provider list maintained by the contracting organization.

C. Health information shall be submitted on the [smah]

family day [care] provider applicant, assistant(s) and substitute providers, if any, and any other adult household member who comes in contact with children or handles food served to children. The applicant shall return the completed application form along with a tuberculosis (TB) form which provides written proof of the results of a tuberculosis examination for the applicant, the provider assistant, if any, and all other persons who care for children in the family day [care] home as follows:

1. Initial tuberculosis examination and report.

a. Within 90 days before the date of initial application for registration or within 30 days before employment or having contact with children in a registered home, each individual shall obtain a tuberculin skin test 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 the results of the test.

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 maintained at the family day [care] home.

EXCEPTION: An individual may delay obtaining the tuberculosis test if a statement from a physician is provided that indicates the test is not advisable for specific health reasons. This statement shall include an estimated date for when the test can be safely administered. The individual shall obtain the test no later than 30 days after this date.

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 individual's record maintained at the family day [care] home.

(4) Following the two-year period during which chest x-rays are required annually, additional screening shall be obtained every two years.

b. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.

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

3. At the request of the contracting organization or the Department of Social Services, a report of examination by a 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.

D. Information certifying that those in contact with children do not have a criminal background shall be submitted. Attachments will include:

1. A criminal records check, as specified in § 63.1-198.1 of the Code of Virginia, conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

2. A Child Protective Services (CPS) Central Registry Clearance conducted no more than 90 days before the date of initial application and no more than 90 days before the date of application for renewal, for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

3. A sworn disclosure statement for the provider applicant, the provider assistant, and the substitute provider, if any, and any adults residing in the home.

§ 2.3. Registration fees.

A. At the time an application for a certificate of registration is submitted to the contracting organization, the provider applicant shall pay a nonrefundable registration fee not to exceed \$50 for a two-year period. The fee shall be paid in the form of a check or money order made payable to the contracting organization. (This does not include the fee for the criminal records check, CPS Central Registry Clearance or the tuberculosis test.)

B. An additional fee shall not be required if a minor change in the information collected, e.g., change in name, occurs before the expiration date of the current certificate of registration or if the provider requires a duplicate copy of the certificate of registration due to loss or destruction of the original.

C. An additional fee shall only be charged if a second home visit is required because:

1. The provider changes location (not to exceed \$50);

2. The original certificate of registration was revoked (not to exceed \$50);

3. The provider's completion of a corrective action plan needs to be verified (not to exceed \$10).

§ 2.4. Issuance of a certificate of registration.

A. After the provider applicant has satisfactorily met the requirements for voluntary registration, the contracting organization shall certify the provider applicant as eligible for registration to the commissioner and recommend the issuance of a certificate of registration.

B. The commissioner shall issue the certificate of registration, which shall not be transferable, to a specific provider at a specific location.

C. If it is necessary to change any identifying information (name and phone) noted on the certificate of registration prior to the end of the two-year registration period, the provider shall advise the contracting organization no later than 14 calendar days after the change.

D. If the provider changes location prior to the end of the two-year registration period, [~~he~~ the provider] shall permit and participate in a second home visit and an evaluation of the new residence within 30 days of occupying the residence.

E. The provider shall not claim in advertising or in any written or verbal announcement to be registered with the Commonwealth of Virginia unless a certificate of registration is currently in effect.

F. A provider who has been denied a certificate of registration or who has had a certificate of registration revoked or refused renewal by the commissioner shall not be eligible for issuance of a certificate of registration until six months after the date of such action, unless the waiting period is waived by the commissioner as noted in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia.

§ 2.5. Renewal of a certificate of registration.

A. The certificate of registration shall be subject to renewal upon expiration.

B. No later than 45 days before the expiration of the current certificate of registration, the provider shall submit to the contracting organization a completed renewal application form which shall include, but not limited to, the required information specified in § 2.2 [A].

§ 2.6. Denials, revocations, refusals to renew and provider appeals procedures.

Final Regulations

A. A provider's certificate of registration may be denied, revoked, or refused renewal by the commissioner for cause including, but not limited to:

1. Failure to comply with adult-child ratios, staffing requirements, or other standards set forth in the Requirements for Providers;
2. Use of fraud in obtaining a certificate of registration or in the subsequent operations of the family day [care] home;
3. Any conduct or activity which adversely affects or presents a serious hazard to the health, safety, and general well-being of an enrolled child, or which otherwise demonstrates unfitness by a provider to operate a family day care home;
4. Refusal to furnish the contracting organization [or the department] with records;
5. Refusal to permit immediate admission to the family day [care] home to the parent of an enrolled child who is present in the home or to an authorized representative of the contracting organization or department [during normal hours of operation or] when any enrolled child is present; or
6. Documentation maintained by a contracting organization or the department that a certificate of registration has been denied, revoked, or refused renewal by the commissioner to the provider during the six months prior to the date an application is resubmitted for a certificate of registration.

B. When a provider is found to be in violation of any of the provisions of subsection A of this section, the contracting organization shall notify the provider of the violation(s) first orally and then in writing, and [, when appropriate, shall afford the provider an opportunity to abate the violation(s) within a time frame agreed upon by the contracting organization and the provider. The provider shall immediately abate the violation(s) in situations where children are at risk of abuse or neglect or serious harm or injury.

C. If the provider fails to abate the violation(s) within the agreed upon timeframe or commits a subsequent violation, the contracting organization may recommend to the commissioner that the certificate of registration be denied, revoked, or refused renewal. A statement referencing the standard(s) violated shall be included with the recommendation.

D. Upon notification of the contracting organization's intent to recommend that a certificate of registration be denied, revoked, or refused renewal, a provider may request a review in writing by the contracting organization's review committee within 15 calendar days after receipt of notification.

E. The contracting organization shall submit its recommendation of the provider's eligibility for issuance of a certificate of registration to the commissioner's designee. If a certificate of registration is denied, revoked or refused renewal by the commissioner's designee, the provider may appeal the decision in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and may request a hearing in writing within 15 calendar days after receipt of notification of the decision.

F. After the hearing, the commissioner shall issue the final order which may be appealed in accordance with the Administrative Process Act.

G. A provider whose certificate of registration is revoked or refused renewal shall notify the parent(s) of each child enrolled within 10 calendar days after receipt of notification of such action.

§ 2.7. Provider reporting requirements.

A. The provider shall verbally notify the local department of social services or call the toll free number for the Bureau of Child Protective Services (1-800-552-7096/TDD) immediately whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

B. The provider shall report the following incidents to the contracting organization as soon as possible but no later than the beginning of the contracting organization's next working day:

1. A lost or missing child when it was necessary to seek assistance from local emergency or police personnel;
2. Any injury that occurs while in the provider's care that results in the admission of a child to a hospital;
3. The death of a child while in the provider's care;
4. Any damage to the provider's home that affects the provider's compliance with the Requirements for Providers;
5. Any occurrence of a reportable disease, as specified in the list of reportable diseases provided by the contracting organization;
6. The termination of all family day care services by the provider; or
7. The provider's decision to surrender the certificate of registration in accordance with the Requirements of the Voluntary Registration Program.

§ 2.8. Provider record requirements.

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A. The provider's records shall be open for inspection by authorized representatives of the contracting organizations and the department.

B. The provider shall maintain on file a signed statement from each parent, affirming receipt of the Information to Parents Statement.

[~~C.~~ The provider shall assume responsibility for submitting information on any training completed to the contracting organization.]

[~~D.~~ C.] The provider shall maintain an individual record for each child enrolled in care. This record shall include:

1. The child's full name (including nicknames, if any), address and birth date;
2. Name, address and telephone number of each parent or other responsible person(s);
3. Name, address and telephone number of each parent's place of employment and his or her work hours;
4. Name, address and telephone number of one or more persons designated by the parent(s) to be called in case of emergency when a parent cannot be reached during the hours the child is in care;
5. Name, address and telephone number of the child's physician;
6. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;
7. The child's allergies to medication or drugs, if applicable, and directions for providing medicines to the child;
8. The name of the parent's hospitalization plan and number or medical assistance plan, if applicable;
9. The parent's signed authorization for the child's emergency medical treatment and written consent for giving of medications to the child;
10. The child's date of enrollment in and date of withdrawal from [;] the family day [care] home, when applicable;
11. Results of the health examination and up-to-date immunization records of each child unless there is record of a medical or religious exemption;
12. Names of persons authorized to visit or call for the child, as well as those who are not to visit or call for the child;
13. A record of any accidents and injuries sustained

by a child;

14. The parent's signed authorization to use a substitute provider and his or her name, address, and phone number;

15. The parent's signed authorization to transport children and to take trips out of the immediate community;

16. Any written agreement made between the [family] day [care] provider and the natural parent, guardian, or other responsible person for each child in care. The agreement may cover hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; and any special services to be provided by either party to the agreement.

[~~E.~~ D.] The emergency contact information listed in subdivisions D 2 through D 5 of this section shall be made available to a physician, hospital or emergency care unit in the event of a child's illness or injury.

[~~F.~~ E.] Whenever the provider leaves the home with the child(ren), the provider shall have the emergency contact information and medical information required by subdivisions D 1 through D 9 of this section in [his] the caregiver's] possession.

[~~G.~~ F.] The [family] day [care home] provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent(s) or guardian(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 contracting organization or the department.

§ 2.9. Staffing.

[A. There shall never be more than five unrelated children in care in a registered small family day care home except that 10 unrelated children may be accepted each day when school is in operation when at least five of the children are of school age and in the home no more than three hours immediately before and three hours immediately after school hours.

[A. The provider shall ensure that the total number of children receiving care at any one time does not exceed the maximum capacity allowed [in the by] law (§ 63.1-196.04 of the Code of Virginia) for family day homes that may apply for voluntary registration.]

[B. The following adult-to-child ratios shall be maintained for children receiving care until October 31, 1993. (Note: The adult-to-child ratios for voluntary registration shall be same as those for licensed day homes effective November 1, 1993.)]

[~~B.~~ I.] One adult may care for [up to] nine children

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at any one time, within the limitations that follow. This includes children related to the provider by blood or marriage the provider's own children and any children who reside in the home.]

[1. a.] Of the nine children, no more than six shall be under school age without an assistant;

[2. b.] Of the children under school age, no more than five shall be under 31 months (2 1/2 years of age or younger) even when an assistant is present;

[3. c.] Of the children under 31 months, no more than three shall be under 16 months without an assistant.

[4. 2.] School age children [(related and unrelated)] who are 10 years of age and older shall not count in determining the ratio of [children to adults] for staffing purposes.

[C. Providers shall sign and submit a notarized statement to the contracting organization attesting to the names, birth dates, and relationships of related children receiving care. This statement includes the signature of the parent(s) or legal guardian(s) of the related children.]

PART III. HEALTH AND SAFETY CHECKLIST.

§ 3.1. Health and safety checklist [criteria] .

A. A health and safety checklist shall be completed by providers who apply for voluntary registration. The checklist serves as both a self-review tool for providers and an initial and renewal evaluation method for the contracting organization. Items included on the checklist are those which address the basic health and safety needs of children in care in [small] family day [care] homes.

B. The provider shall review and complete the checklist before being certified as eligible for issuance of a certificate of registration.

C. If the provider does not meet the criteria on the health and safety checklist at the time of the initial evaluation or monitoring visit, a corrective action plan shall be completed. This will briefly describe the standard not met, the action to be taken to meet it, the date by which it shall be completed and the signature of the provider.

D. The home shall have indoor running water and an indoor bathroom equipped with a flush toilet and a sink with running water.

E. If the provider does not have a working telephone, [he the caregiver] shall demonstrate that one is quickly and easily accessible in case of an emergency.

(MODEL FORM)

VOLUNTARY REGISTRATION PROVIDER APPLICATION FORM

Part II of II

Page 1 of 2

NAME OF PROVIDER _____ SOCIAL SECURITY # _____

NAME OF CITY OR COUNTY IN WHICH YOU LIVE _____

*** IF CHILDREN ARE IN CARE FOR DIFFERENT TIME SHIFTS, COMPLETE SEPARATE FORMS FOR EACH SHIFT ***

IF YOU HAVE AN ASSISTANT, PLEASE PROVIDE THE FOLLOWING INFORMATION:

NAME OF ASSISTANT - _____ DATE OF BIRTH - ____/____/____

NAME OF ASSISTANT - _____ DATE OF BIRTH - ____/____/____

IF YOU HAVE A SUBSTITUTE PROVIDER, PLEASE PROVIDE THE FOLLOWING INFORMATION:

NAME OF SUBSTITUTE - _____ DATE OF BIRTH - ____/____/____

NAME OF SUBSTITUTE - _____ DATE OF BIRTH - ____/____/____

LIST THE NAMES AND BIRTH DATES OF ALL CHILDREN RECEIVING CARE:

NAMES	BIRTH DATES	CHECK ONLY ONE IF APPLICABLE		
		PROVIDER'S CHILDREN	PROVIDER'S GRAND - CHILDREN	OTHERS RESIDING IN HOME
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____
_____	____/____/____	_____	_____	_____

032-05-210 B (2/93)

Appendix A
OVER-->

VOLUNTARY REGISTRATION PROVIDER APPLICATION FORM

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List the names of all persons 18 years of age and older in the home (excluding the provider, substitute providers, and assistants listed above):

SWORN DISCLOSURE STATEMENT: (This statement must be signed in the presence of a notary).

I certify that the information submitted on this application is true to the best of my knowledge and belief.

Provider's Signature _____ Date _____

City/County of _____; State of _____

subscribed and sworn to before me this _____ day of _____, 19__.

My commission expires _____, 19__.

(Notary Public)

VOLUNTARY REGISTRATION OF [SMALL] FAMILY DAY [GARE] HOMES REQUIREMENTS FOR PROVIDERS

VOLUNTARY REGISTRATION HEALTH and SAFETY CHECKLIST

Verify each item that is currently true for your home by inserting a P (Provider) in the first slot provided before the item. The Screener will place an S (Screener) in the second slot when this information is verified during [his/her/their] visit to your home. Mark the item N/A if the item is not applicable to your home.

Section 1. I AM PREPARED TO DEAL WITH EMERGENCIES:

___ I have a medical release form from each family to permit emergency care; I also have the names and phone numbers of one or more persons besides the family who may be contacted in case of emergency.

___ I have an operable telephone, or have easy access to one, with a 911 sticker or emergency telephone numbers posted in clear view.

___ My address or equivalent identifying information is easily seen from the street or parking lot.

___ Exit ways, hallways and stairways are always well lighted and free of obstructions.

___ I have a first aid kit and an operable flashlight available at all times.

___ I practice fire drills monthly to the point of exit from the home and have a posted evacuation plan.

___ I have working smoke detectors on floors where children are in care.

Section 2. I TAKE PRECAUTIONS TO PREVENT ACCIDENTS AND INJURIES:

___ I have taken steps to safeguard the outdoor play area used by children in my home from open and obvious hazards, such as: standing water, animal fecal material, construction materials, poison ivy, dangerous lawn and garden tools, tools, and traffic. (Fencing or other barriers might be needed when play area is next to a body of water or busy street.)

___ My home is in good repair, with no peeling lead paint.

___ Steps and stairs accessible to children are in good repair with hand or guard rails.

___ I have taken steps to safeguard my home from open and obvious household hazards, such as loose carpeting, unmarked glass doors, and small items that could be swallowed.

___ [Cribs or playpens that meet the current Consumer Product Safety Commission (CPSC) federal standards for cribs are used for children under 18 months of age.] The service side of an occupied crib is accessible. Crib slats are [lessno more] than 2 3/8 inches apart.

VOLUNTARY REGISTRATION OF [SMALL] FAMILY DAY [GARE] HOMES REQUIREMENTS FOR PROVIDERS

___ I use screened doors and windows for ventilation.

___ Protective barriers, including but not limited to safety gates, are placed on stairways that are accessible to children. Safety gates that are used [will] meet the Consumer Product Safety Commission (CPSC) federal standards for juvenile products.

___ Electrical outlets are child-proof in all areas accessible to children. Multi-plug adapters that are used [will] have fuse safety features.

___ I place barriers around space heaters, fireplaces, wood stoves, and fans when in use.

___ I keep flammable or combustible liquids away from heat sources and out of the reach of children.

___ I keep materials that burn easily (such as newspaper, wood, cloth) at least three feet away from appliances and other heat sources.

___ All portable heating appliances are UL or FM approved.

___ My fireplaces, heating system, and duct work are in good repair.

___ My washer, dryer and dryer vent are kept free of lint.

___ My electrical panel is easily accessible to adults, free of loose connections and frayed wiring, and has no missing fuses. There is no frayed or uninsulated wiring anywhere in the house.

___ I keep medications and toxic household products in areas inaccessible to children and away from food products.

___ I keep dangerous objects, such as knives, out of the reach of children, unless under supervision, e.g., when children are using these objects in planned activities.

___ I ensure that small appliances are not accessible to children, unless under supervision, e.g., when children are using these appliances in planned activities.

___ I keep firearms unloaded, apart from ammunition, and in a locked place.

___ My kitchen appliances are in good working order, with range, oven and hood clean and free of grease.

Section 3. I TAKE PRECAUTIONS TO PROTECT THE HEALTH OF THE CHILDREN ENTRUSTED TO ME:

___ I keep up-to-date immunization records on each child in care, unless I have a statement of medical or religious exemption.

___ My hands and children's hands are washed with soap before meals and after toileting and diapering.

___ I serve nutritious meals and snacks to children.

___ Rooms used by children are dry, well lighted, and kept at least 68 degrees during heating season.

Final Regulations

VOLUNTARY REGISTRATION OF [SMALL] FAMILY DAY [CARE] HOMES REQUIREMENTS FOR PROVIDERS

— I have indoor running water and bathrooms.

— My bathrooms are kept clean and have working toilets and sinks, tissue, soap, and disposable or individually assigned towels.

— Drinking water is available to children at all times.

— I allow only one child to occupy a crib or playpen at a time.

— My refrigerator is kept at no more than 45 degrees (F), food is kept from spoilage, and children's food brought from home and infant formula is clearly labeled with their name.

— My home is free of insect and rodent infestation.

— I agree to provide a smoke-free environment in rooms accessible to children while children are in care.

— My dogs and cats have up-to-date rabies shots and are kept from food preparation surfaces.

Section 4. I ENCOURAGE CHILDREN TO DEVELOP THEIR OWN SKILLS AND PERSONALITIES:

— I plan for adequate rest and play for children in care.

— I encourage children to participate in activities appropriate to their ages and levels of development.

— I never use discipline which would demean or belittle a child and never use physical (corporal) punishment.

Section 5. I AM MINDFUL OF MY RESPONSIBILITIES TO UPHOLD LAWS AND REGULATIONS IMPORTANT TO THE PROTECTION OF CHILDREN:

— I am at least 18 years of age and have not been convicted of any offenses specified in §63.1-196.1 of the Code of Virginia.

— My physical and mental condition are such that I am able to care for children.

— My family day [care] home is not required to be licensed under state law. [I never have more than five unrelated children in care unless I accept up to ten unrelated children each day when school is in operation and at least five of these children are of school age and in my home—no more than three-hours before and three hours after school. I never have more than nine children who receive caret protection and residence in my home at the same time without an assistant; this includes my own or related children: I make sure that the total number of children receiving care is not more than the maximum capacity allowed in the law for homes that may apply for voluntary registration. I understand that children who are ten years of age and older are not counted in adult-to-child ratios. I never have more than nine children who receive caret protection and guidance in my home at the same time without having an assistant; this includes my own and resident children.] No more than six of these nine children will be under school age unless I have an assistant; no more than five

VOLUNTARY REGISTRATION OF [SMALL] FAMILY DAY [CARE] HOMES REQUIREMENTS FOR PROVIDERS

of the children under school age will be under 31 months even when I have an assistant; no more than three of the children under 31 months will be under 16 months unless I have an assistant. The Uniform Statewide Building Code permits no more than [5 five] children below the age of 31 months in a [small] family day [care] home. [I understand that the adult to child ratios for registered homes shall be the same as those developed for licensed homes beginning November 1, 1993. I will comply, as necessary, with any changes to the ratios.]

— I never leave children alone with an assistant younger than 18 years of age. I make sure children are properly supervised at all times.

— I make sure that any assistant or substitute provider is familiar with the Requirements for Providers.

— I report cases of suspected child abuse and neglect and other hazardous situations as described in the Requirements for Providers.

— I make sure that any adult (18 years of age or older), including any adult household member, who comes in contact with children or will provide ongoing care to children has a tuberculosis (TB) test, criminal records check and Child Protective Services Central Registry clearance; and I will not allow them to use alcohol or illegal drugs while children are in care.

— If I transport children, I [have a valid driver's license (shown to screener) and] make sure any vehicle used to transport children meets the standards set by the Division of Motor Vehicles and is equipped with the proper restraining devices required by law.

— I will comply with the Requirements for Providers and permit and participate in an evaluation of my home by the department or contracting organization; and, I will maintain the records listed in the Requirements for Providers and make them available for review by an authorized screener.

— I understand that the contracting organization and the Virginia Department of Social Services stand ready to help me provide good care to children and that I may ask for help or advice as needed.

— I, the undersigned, agree to comply with these requirements.

Signature: _____

Name: (print) _____

Address: _____

Phone Number: (____) _____

Days/Hours of Operation: _____

I, _____ (screener), verify that the provider meets the health and safety standards and has agreed to comply with the above requirements.

Agency conducting evaluation: _____

VOLUNTARY REGISTRATION OF [SMA&B] FAMILY DAY [GARE] HOMES REQUIREMENTS FOR PROVIDERS

Check one:

Initial Verification: _____

Interim Visit: _____

Renewal Visit: _____

Other (Specify): _____

Time of Visit: _____

Date: _____

I certify that this regulation is full, true, and correctly dated.

Larry D. Jackson, Commissioner
Department of Social Services

Date _____

SOC. SEC. #											
PLEASE PRINT											
NAME											
ADDRESS											
CITY STATE ZIP											
TELEPHONE (AREA CODE) - LOCAL NUMBER											

Part I of II
Voluntary Registration Provider Application Form

Please read this application carefully. Before you continue, please make sure the top portion is filled in completely. Use a number 2 pencil or a black/blue pen to completely fill in the bubble which most accurately describes your answer.

- I am applying for:
 - an initial certificate of registration
 - a renewal certificate of registration
- How many adults live in the family day [care] home other than yourself?
 - One
 - Two
 - Three
 - Four
 - More than four (Number) _____
- Are you interested in serving as a substitute for other providers when vacant slots are available? Yes No
- Are you currently participating in the USDA Food Program?
 - Yes Name of sponsoring agency: _____
 - No
- If no, are you interested in participating in the food program?
 - Yes
 - No

(FOR AGENCY USE ONLY)

Date Received By Contracting Agency

M	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9
M	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9
D	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9
D	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9
Y	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9
Y	0	0	1	0	2	0	3	0	4	0	5	0	6	0	7	0	8	0	9

Final Regulations

* * * * *

Title of Regulation: VR 615-37-01. Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers.

Statutory Authority: § 63.1-174 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

This regulation establishes the criminal record check procedures to be followed by home for adults and adult day care center applicants and compensated employees. This regulation supersedes emergency criminal record check requirements that were implemented July 1, 1992.

The regulation includes the following topics: (i) Legal Base and Subjectivity; (ii) Sworn Disclosure Statements; (iii) Validity of Criminal Record Reports; and (iv) Maintenance of Criminal Record Reports.

This regulation ensures additional protection for residents of homes for adults and adult day care centers.

Changes were made to this regulation to reflect the statutory changes enacted during the 1993 General Assembly session. These changes include a reduction in the number and types of criminal convictions that would prohibit employment and a requirement that applicants disclose all convictions. Other changes were made to clarify the intent of some standards.

VR 615-37-01. Regulation for Criminal Record Checks for Homes for Adults and Adult Day Care Centers.

PART I INTRODUCTION.

§ 1.1. Definitions.

The following words and terms when used in conjunction with this regulation shall have the following meaning:

"Barrier crimes" means certain crimes which automatically bar individuals convicted of same from employment at a licensed home for adults or adult day care center. These crimes, as specified by §§ 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia, are [murder; abduction for immoral purposes; sexual assault; pandering; obscenity offenses; crimes against the person; crimes against property; crimes involving fraud; crimes involving health and safety; crimes involving morals and decency; and abuse of aged and incapacitated adults: murder; abduction for immoral purposes; assaults and bodily woundings; robbery; sexual assault; arson; pandering; crimes against nature involving children; taking indecent liberties with children; abuse and neglect of children;

failure to secure medical attention for an injured child; obscenity offenses; or abuse or neglect of an incapacitated adult. Applicants convicted of one misdemeanor crime not involving abuse or neglect or moral turpitude may be hired provided five years has elapsed since the conviction.

]

"Central criminal records exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request form is processed.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal record report on an individual.

"Criminal record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes; the criminal history record discloses all known conviction data.

"Employee" means compensated personnel working at a facility regardless of role, service, age, function or duration of employment at the facility. Employee also includes those individuals hired through a contract to provide services for the facility.

"Facility" means a home for adults, district home for adults or adult day care center subject to licensure by the Department of Social Services.

"Sworn disclosure statement" means a document to be completed, signed, and submitted for employment. The document [indicates that the individual has neither a conviction nor pending charges in, or outside, discloses the employment applicants' criminal convictions and charges that occurred within or outside)] the Commonwealth of Virginia of those crimes which act as barriers to employment at the indicated facilities. This is required as specified in §§ 63.1-173.2, 63.1-189.1 and 63.1-194.13 of the Code of Virginia.

§ 1.2. Legal base and applicability.

A. Sections 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia require all employees of homes for adults, district homes for adults, and adult day care centers, as defined by §§ 63.1-172 and 63.1-194.1 of the Code of Virginia, to obtain a criminal record report from the Department of State Police.

Exception: (As set forth in §§ 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the Code of Virginia) The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a criminal record report.

B. Sections 63.1-173.2, 63.1-189.1, and 63.1-194.13 of the

Code of Virginia require all [employees applicants] of homes for adults, district homes, and adult day care centers to provide the hiring facility with a sworn disclosure statement.

PART II. THE SWORN DISCLOSURE STATEMENT.

§ 2.1. Sworn disclosure statement.

A. The sworn disclosure statement shall be completed [prior to employment for all applicants.] (NOTE: A model form is available from the department upon request.)

B. Any person making a false statement on the sworn disclosure statement shall be guilty of a Class 1 misdemeanor.

C. The sworn disclosure statement shall be attached and filed with the criminal record report.

PART III. THE CRIMINAL RECORD REPORT.

§ 3.1. General requirements.

A. The criminal record report shall be obtained on or prior to the 30th day of employment for each employee.

B. Any person required by these standards and regulations to obtain a criminal record report shall be ineligible for employment if the report contains convictions of the barrier crimes.

C. If a criminal history record report is requested, it shall be the responsibility of the licensee to ensure that the employee has not been convicted of any of the barrier crimes.

D. Criminal record reports shall be kept confidential. Reports on employees shall only be received by the facility administrator, licensee, board president, or their designee.

E. A criminal record report issued by the State Police shall not be accepted by the facility if the report is dated more than 90 days prior to the date of employment.

F. Any applicant denied employment because of convictions appearing on his criminal record report shall be provided a copy of the report by the hiring facility.

§ 3.2. Validity of criminal record reports.

A. Facility staff shall accept only the original criminal record report. Photocopies will not be acceptable.

Exception: Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;

2. The date of employment; and

3. A statement verifying that the criminal record report has been obtained within 30 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal record report.

B. Each criminal record report shall be verified by the operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, a new criminal history [record] request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal record report remains valid as long as the employee remains in continuous service at the same facility.

D. When an individual terminates employment at one facility and begins work at another facility, the criminal record report secured for the prior facility shall not be valid for the new facility. A new criminal record report and sworn disclosure statement shall be required.

Exceptions:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal record report has been transferred or forwarded to the new location.

2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal record report and sworn disclosure statement are required.

§ 3.3. Maintenance of criminal record reports.

A. The original report shall be maintained at the facility where the person is employed.

B. Criminal record reports conforming to the requirements for all employed staff shall be maintained in the files of the facility during the time the individual is employed and for one year after termination of work.

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Exception: See § 3.2 D 1.

C. Criminal record reports shall be made available by the facility to the licensing representative.

D. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

E. Criminal record reports shall be maintained in locked files accessible only to the licensee, administrator, board president, or their designee.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL

Title of Regulation: VR 615-32-02. Regulations for Criminal Record Checks: Licensed Child-Caring Institutions (REPEALED).

Title of Regulation: VR 175-04-01. Criminal Record Checks for Licensed Child Care Centers (REPEALED).

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

Effective Date: July 1, 1993.

Summary:

These regulations are being repealed concurrently with the promulgation of the Regulation for Criminal Record Checks for Child Welfare Agencies. Amendments to the Code of Virginia made during the 1992 General Assembly session require the promulgation of regulations for criminal checks for licensed or registered child welfare agencies. Maintaining the existing regulation would be in conflict with the 1992 mandate.

Any and all forms that were promulgated in order to comply with VR 615-32-02 and VR 175-04-01 are repealed.

* * * * *

Title of Regulation: VR 615-36-01 and 175-10-01. Regulation for Criminal Record Checks for Child Welfare Agencies.

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

Effective Date: July 1, 1993.

Summary:

Effective July 1, 1992, child welfare agencies subject

to licensure and family day homes which are voluntarily registered are required to obtain either the original criminal record clearance with respect to specified offenses or the original criminal record history from the Central Criminal Records Exchange.

This report must be secured for all applicants for licensure or registration, board officers, employees, volunteers, foster home applicants, adoptive home applicants, family day home providers and all adults living in the home of the family day home. A sworn disclosure statement must also be obtained.

The Division of Licensing Programs, as the agent of the Commissioner of Social Services, will enforce the provisions of §§ 63.1-198 and 63.1-198.1 of the Code of Virginia. The Central Criminal Records Exchange, Department of State Police, will issue criminal record reports as required by law. Any facility's failure to obtain a criminal record report for each designated individual shall be grounds for denial or revocation of the registration or license (§ 63.1-198.1 of the Code of Virginia). A license or registration shall not be granted to any applicant as a child welfare agency who has been convicted of any offense specified in § 63.1-198.1 of the Code of Virginia (§ 63.1-199 of the Code of Virginia).

Child welfare agencies are prohibited from hiring or using as volunteers any persons who have been convicted of any offense specified in § 63.1-198.1. Child placing agencies are prohibited from approving foster and adoptive home applicants who have been convicted of a barrier crime. Family day systems are prohibited from approving a family day home if the caretaker has been convicted of a barrier crime. Family day systems are required to obtain a criminal record clearance or a criminal history record from the Central Criminal Records Exchange for all family day providers and any other adult living in the home of the family day providers. Contract agencies are prohibited from recommending registration or continued registration for any family day home if the caretaker or other adult living in the home has been convicted of a barrier crime.

This regulation establishes the criminal record check procedures to be followed by licensed and registered child welfare agencies.

The regulation includes the following topics: (i) Legal Base and Subjectivity; (ii) Sworn Disclosure Statements; (iii) Validity of Criminal Record Reports; and (iv) Maintenance of Criminal Record Reports and Requirements for Board Members.

This regulation protects children in out-of-home care. The law was amended during the 1993 General Assembly session to add abuse and neglect of incapacitated adults to the list of barrier crimes. Also, the names of certain child welfare agencies were

changed. This regulation includes these changes, as well as others made for clarification purposes.

VR 615-36-01 and 175-10-01. Regulation for Criminal Record Checks for Child Welfare Agencies.

PART I INTRODUCTION.

§ 1.1. Definitions.

The following words and terms when used in conjunction with this regulation shall have the following meaning:

"Applicant for licensure or registration" means all agents of child welfare agencies and [~~small~~] family day [~~care~~] homes, including owners, partners or officers of the governing board of a corporation or association, who have applied for licensure or registration.

"Barrier crimes" means certain crimes which automatically bar an individual convicted of same from employment or volunteer services at child welfare agencies. It also prevents persons convicted of same who are screened as adoptive or foster parents by child-placing agencies, and caretakers approved by family day [~~care~~] systems, from assuming such roles. These crimes, as specified by § 63.1-198.1 of the Code of Virginia, are murder; abduction for immoral purposes; sexual assault; pandering; crimes against nature involving children; taking indecent liberties with children; abuse and neglect of children, including failure to secure medical attention for an injured child; [~~and~~] obscenity offenses [: ; and abuse and neglect of incapacitated adults.]

"Central Criminal Records Exchange" means the information system containing conviction data of those crimes committed in Virginia, maintained by the Department of State Police, through which the criminal history record request is processed.

"Contracting organization" means the agency which has been designated by the Department of Social Services to administer the voluntary registration program for [~~small~~] family day [~~care~~] home providers.

"Criminal history record request" means the Department of State Police form used to authorize the State Police to generate a criminal record report on an individual.

"Criminal record report" means either the criminal record clearance or the criminal history record issued by the Central Criminal Records Exchange, Department of State Police. The criminal record clearance provides conviction data only related to barrier crimes. The criminal history record discloses all known conviction data.

"Employee" means all personnel hired at a facility regardless of role, service, age, function or duration of employment at the facility. Employees also include those individuals hired through a contract to provide services for

the facility.

"Facility" means a child welfare agency as defined in § 63.1-195 of the Code of Virginia and subject to licensure or [~~registration voluntarily registered~~] by the Department of Social Services.

"Officer of the board" means anyone holding an office on the board of the facility and responsible for its operation in any manner.

"Parent-volunteer" means someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program of care which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to § 63.1-198.1 or § 63.1-198.2 of the Code of Virginia.

["~~Small family day care home~~" means any private family home in which no more than five children, except children related by blood or marriage to the person who maintains the home, are received for care, protection, and guidance during only a part of the day. Further, a family day care home which accepts no more than 10 children, at least five of whom are school age and not in the home for longer than three hours immediately before and three hours immediately after school each day, may also voluntarily register as a small family day care home.]

"Sworn disclosure statement" means a document to be completed, signed, and submitted by the applicant for licensure or registration and applicants for employment or volunteer service, applicants for foster home and adoptive home approval, and adults living in the family day [~~care~~] home. The document indicates that the individual has neither a conviction nor pending charges in, or outside, the Commonwealth of Virginia of those crimes which act as barriers to employment at or approval of the indicated facilities. This is required as specified in §§ 63.1-198 and 63.1-198.1 of the Code of Virginia.

"Volunteer" means anyone who, without pay, at any time would be alone with, in control of, or supervising one or more children outside the physical presence of a paid facility staff member. This pertains to all activities occurring at the facility location or sponsored by the licensed facility. This also includes volunteer staff counted for purposes of maintaining required ratios for the program.

§ 1.2. Legal base and applicability.

A. Sections 63.1-198 and 63.1-198.1 of the Code of Virginia require all employees, volunteers, and applicants for licensure or registration of a child welfare agency, as defined by § 63.1-195 of the Code of Virginia, to obtain a criminal record report from the Department of State Police. This includes caretakers approved by family day [~~care~~] systems, all adults living in the family day [~~care~~] home, and those individuals approved by child-placing

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agencies as foster or adoptive parents.

Exception: (As set forth in § 63.1-198.1 of the Code of Virginia) "The provisions of this section shall not apply to a parent-volunteer of a child attending such licensed facility whether or not such parent-volunteer will be alone with any child in the performance of his duties."

B. Section 63.1-198.1 of the Code of Virginia requires [that] all employees, volunteers, foster or adoptive parents, and applicants for licensure [of] or registration as a child welfare agency [;] as defined by law (§ 63.1-195) [;] shall provide the hiring or approving authority, facility or agency with a sworn disclosure statement. This includes caretakers approved by family day [care] systems and those individuals approved by child-placing agencies as foster or adoptive parents. Pursuant to § 63.1-198 of the Code of Virginia, all adults living in the family day [care] home must also provide a sworn disclosure statement.

PART II. THE SWORN DISCLOSURE STATEMENT.

§ 2.1. Sworn disclosure statement.

A. The sworn disclosure statement shall be completed prior to employment or commencement of volunteer service, registration, or approval. (NOTE: A model form is available from the department upon request.)

B. Any person making a false statement on the sworn disclosure statement shall be guilty of a Class 1 misdemeanor.

C. The sworn disclosure statement shall be attached and filed with the criminal record report.

PART III. THE CRIMINAL RECORD REPORT.

§ 3.1. General requirements.

A. Prior to the issuance of an initial license or registration, the criminal record report for the applicant(s) for licensure or registration shall be made available to the commissioner's representative.

B. The criminal record report shall be obtained on or prior to the 21st day of employment or volunteer service for individuals participating in the operation of a facility.

Exception: The criminal record report shall be obtained prior to approval of foster and adoptive homes by private child-placing agencies and prior to approval of family day [care] providers by family day [care] systems.

C. Any person required by these standards and regulations to obtain a criminal record report shall be ineligible for employment, volunteer service or any facility related activity, if the report contains convictions of the barrier crimes.

D. If a criminal history record report is requested, it shall be the responsibility of the licensee [or registered family day home provider] to ensure that the employee has not been convicted of any of the barrier crimes.

[E. Criminal record reports shall be kept confidential. Reports on employees and volunteers shall only be received by the facility administrator, board president, licensee, registered provider, or their designee.]

[~~E. F.~~] A criminal record report issued by the State Police shall not be accepted by the facility, registration or contract agency if the report is dated more than 90 days prior to the date of employment or volunteer service at the facility or date of application for approval as a foster home, adoptive home, or family day [care] home.

§ 3.2. Validity of criminal record reports.

A. Contract agencies or facility staff shall accept only the original criminal record report. Photocopies will not be acceptable.

Exception: Facilities using temporary agencies for the provision of substitute staff shall request a letter from the agency containing the following information:

1. The name of the substitute staff person;
2. The date of employment; and
3. A statement verifying that the criminal record report has been obtained within 21 days of employment, is on file at the temporary agency, and does not contain barrier crimes.

This letter shall have the same maintenance and retention requirements of a criminal record report.

B. Each criminal record report shall be verified by the contract agency or operator of the facility by matching the name, social security number and date of birth to establish that all information pertaining to the individual cleared through the Central Criminal Records Exchange is exactly the same as another form of identification such as a driver's license. If any of the information does not match, a new criminal history request must be submitted to the Central Criminal Records Exchange with correct information.

C. A criminal record report remains valid as long as the employee, volunteer, foster parents, or family day [care] home provider remains in continuous service at the same facility.

Exception: Criminal record reports are required every two years for voluntary registration program participants.

D. When an individual terminates employment or ceases volunteer work at one facility and begins work at another facility, the criminal record report secured for the prior

facility shall not be valid for the new facility. A new criminal record report and sworn disclosure statement shall be required.

Exceptions:

1. When an employee transfers to a facility owned and operated by the same entity, with a lapse in service of not more than 30 days, a new criminal record report shall not be required. The file at the previous facility shall contain a statement in the record of the former employee indicating that the original criminal record report has been transferred or forwarded to the new location.

2. A criminal record report for an individual who takes a leave of absence will remain valid as long as the period of separation does not exceed six consecutive months. Once a period of six consecutive months has expired, a new criminal record report and sworn disclosure statement are required.

§ 3.3. Maintenance of criminal record reports.

A. The original report shall be maintained at the facility where the person is employed, volunteers or is approved.

B. Criminal record reports conforming to the requirements for all employed staff or utilized volunteers and approved homes shall be maintained in the files of the facility during the time the individual is employed, volunteering or is approved and for one year after termination.

Criminal record reports shall be made available by the facility to the licensing representative or the representative of the contract agency.

Exception: See § 3.2 D 1.

C. When an employee is rotated among several facilities owned or operated by the same entity, the original criminal record report shall be maintained at the primary place of work or designated facility location. A copy of the criminal record report shall be on file at the facility where the employee is actively working which has a notation of where the original report is filed.

D. Criminal record reports shall be maintained in locked files. These files shall be accessible only to the following facility related staff: the licensee, administrator, [registered] provider, board president, or their designee.

§ 3.4. Requirements for board members.

A. When an individual becomes an officer of the board which serves as the licensee of a facility, a criminal record report shall be obtained by the facility within 21 days after the board member assumes the position.

B. When a board officer changes position within a

board, a new criminal record report is not required.

C. Officers of advisory boards are not required to obtain criminal record reports.

EMERGENCY REGULATIONS

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: VR 125-01-5. Retail Operations (§ 22. Waiver of Banquet License Fee).

Statutory Authority: § 4-11 of the Code of Virginia.

Effective Dates: April 28, 1993, through April 27, 1994.

ORDER ADOPTING EMERGENCY REGULATION NO. A-257

Effective March 22, 1993, § 4-11 of the Code of Virginia permits the Virginia Alcoholic Beverage Control Board ("Board") to adopt regulations which allow the Board to waive "... the license tax for an applicant for a banquet license, such waiver to be based on (i) the amount of alcoholic beverages to be provided by the applicant, (ii) the not-for-profit status of the applicant, and (iii) the condition that no profits are to be generated from the event." Regulations submitted during the 1993 rulemaking process will not become effective until January 12, 1994.

Recent amendments to § 4-11 were enacted as emergency legislation. An emergency regulation is needed to comply with these statutory changes.

IT IS ORDERED that, pursuant to the provisions of §§ 4-11 A and 9-6.14:9 of the Code of Virginia, the following regulation be, and the same is hereby adopted, effective upon its adopting and filing with the Registrar of Regulations.

VR 125-01-5 § 22. Waiver of banquet license fee.

A. Qualifications.

Pursuant to § 4-11 A of the Code of Virginia, the board may waive the banquet license tax for a duly organized not-for-profit corporation or association holding a nonprofit event. A "nonprofit event" means income from the event shall not exceed expenses for the event. Fixed costs, including but not limited to, staff salaries, rent, utilities and depreciation shall not be included as expenses.

B. Restrictions and conditions.

- 1. The applicant shall sign an affidavit certifying the not-for-profit status of the corporation or association and that the event being held is nonprofit.*
- 2. The applicant may serve alcoholic beverages in any combination, the amount to be no more than that which equals the total alcohol content by volume in two kegs (31 gallons) of beer.*
- 3. The granting of a waiver is limited to two events per fiscal year (July 1 - June 30) for any qualifying corporation or association.*

C. Exception.

The board may issue a permit authorizing a variance from subdivision B 2 for good cause shown.

In accordance with Virginia Code § 9-6.14:4.1 C 5, this emergency regulation shall be limited in duration and shall remain in effect for no more than 12 months from the date it is adopted and filed with the Registrar of Regulations, unless modified or repealed by regulation or legislation.

IT IS FURTHER ORDERED that this order be filed in the manner prescribed by the Code of Virginia and that appropriate notice be given to interested parties of the Commonwealth.

The Board will receive, consider and respond to petitions by any interested persons at any time for reconsideration or revisions of this regulation.

ENTER: VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

/s/ George Hampton
Chairman
Date: April 21, 1993

ATTEST:

/s/ Robert N. Swinson
Secretary
Date: April 21, 1993

APPROVED:

/s/ O. Randolph Rollins
Secretary of Public Safety
Date: April 26, 1993

APPROVED:

/s/ L. Douglas Wilder
Governor
Date: April 27, 1993

FILED:

/s/ Joan W. Smith
Registrar of Regulations
Date: April 28, 1993

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

April 9, 1993

Administrative Letter 1993-1

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Supplemental Reports for Potentially Noncompetitive Line and Subclassifications of Commercial Liability Insurance as Required by Virginia Code Section 38.2-1905.2 Not Due Until May 1, 1994
Special Limited Data Call Due July 1, 1993

The 1990 General Assembly amended Virginia Code Section 38.2-1905.2 to permit the biennial (in lieu of annual) designation by the State Corporation Commission (SCC) of lines and subclassifications of commercial liability insurance where it believes competition may not be an effective regulator of rates. The Commission's most recent designation of potentially troubled lines was in its report dated August, 1991. Due to the amendments mentioned above, no report was issued in 1992, and the next report will be issued by the SCC later in 1993.

The issuance of a report designating lines and subclassifications as potentially noncompetitive triggers a data call of Supplemental Reports as required by Section 38.2-1905.2. While the next Supplemental Reports will not be due until May 1, 1994, the data call will include the years 1992 and 1993.

However, a special limited data call will be required of companies who reported written premiums in 1992 for the following classes:

Commercial Contractors Liability
Products and Completed Operations Liability
Municipal Liability

A separate Administrative Letter, No. 1993-8 will be mailed by May 1, 1993 to companies that reported premiums for these lines in 1991. Please alert the proper departments that this data call will be forthcoming, and will be due by July 1, 1993. Questions regarding this special data call should be directed to Eric Lowe at (804) 371-9628.

/s/ Steven T. Foster
Commissioner of Insurance

* * * * *

April 9, 1993

Administrative Letter 1993-2

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Report of Certain Liability Claims as Required by Virginia Code Section 38.2-2228.1 due September 1, 1993

Virginia Code Section 38.2-2228.1 requires that all liability claims for commercial liability insurance as defined in §§ 38.2-117 (Personal Injury Liability) and 38.2-118 (Property Damage Liability) be reported annually to the State Corporation Commission (SCC). The SCC Bureau of Insurance has developed the attached exhibits and reporting forms that insurers should utilize to meet the data reporting requirements of the Code.

A separate report must be submitted for each market definition by each insurer not exempt from the data reporting requirements. For the purposes of the data report, "insurer" shall mean an individual insurer or a group of insurers under common ownership or control. A combined report must indicate that it is a group report and must include the group name and Group NAIC number as well as the name and NAIC number of each individual insurer comprising the group. The reports, or exemption forms, must be filed by September 1, 1993.

Mutual assessment insurers are exempt from all reporting requirements. Other insurers with 1992 written premiums for "Other Liability," "Products Liability" and "Medical Professional Liability" (lines 17, 18, and 11 respectively of page 14 of the Annual Statement) combined totaling \$100,000 or less are exempt from the data reporting requirements. Insurers claiming the premium volume exemption should refer to Exhibit 1 for instructions on completing the exemption form (Exhibit 2).

Insurers not exempt by the paragraph above shall report data in the detail prescribed by the report formats. If some information is not available, insurers should estimate appropriate figures to complete the report forms. Any insurer that is experiencing difficulty in completing typed reporting form numbers VCR1, VCR2, VCR3, VCR4, VCR5, and VCR6 may reproduce these forms, enlarging the size of the page but not changing the layout or format, in order to insure readability.

The market definitions provided in Exhibit 3 are to be used as a guide in defining specific markets which are required to be reported. Insurers should also report the required information for policies written under any comparable classification in use by the individual insurer.

Insurers who are Insurance Services Office (ISO) members or subscribers should contact their liaison officer for assistance regarding the computerized transmission of data. Insurers not affiliated with ISO should write to the Property and Casualty Division of the Bureau of Insurance to request assistance.

Should you have any questions, please direct them to:

Eric C. Lowe
Insurance Market Examiner
Property and Casualty Division

State Corporation Commission

State Corporation Commission
Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219
(804) 371-9628

Virginia Code Section 38.2-218 provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than \$5,000. Failure to file a substantially complete and accurate liability claims report by the due date may be considered a willful violation and may subject the insurer to an appropriate penalty.

/s/ Steven T. Foster
Commissioner of Insurance

* * * * *

April 19, 1993

Administrative Letter 1993-9

TO: All Companies Licensed to Write Fire Insurance and Fire Insurance in Combination with Other Coverages

RE: Building Ordinance or Law Coverage

For policies effective on or after July 1, 1993, § 38.2-2124 of the Code of Virginia states:

Any insurer that issues or delivers in the Commonwealth a new or renewal contract or policy of fire insurance, or a new or renewal contract or policy of fire insurance in combination with other insurance coverages, shall offer in writing as an option a provision that property will be repaired or replaced in accordance with applicable ordinances or laws that regulate construction, repair or demolition.

The purpose of this letter is to inform each company licensed to write fire insurance, or fire insurance in combination with other coverages, that § 38.2-2124 requires a positive offer, in writing, with each new or renewal policy. Insurers have flexibility as to the manner in which the offer is given; however, the offer must not be ambiguous or obscure and must be given not later than at the time the new or renewal policy is delivered.

The attached example may be of help in determining the kind of notice or offer that a company should use in order to comply with § 38.2-2124. Notices used by individual insurers are not subject to our approval, and should not be filed with the Bureau of Insurance; however, future market conduct examinations will include a determination of whether companies are complying with the statute.

Since many currently-approved personal lines and commercial lines policies providing fire insurance coverage do not contain an option to provide the coverage in the

statute, insurers should submit appropriate form, rule, and rate filing as soon as possible in order to comply with the July 12, 1993, effective date.

/s/ Steven T. Foster
Commissioner of Insurance

NOTICE

ADDITIONAL COVERAGE AVAILABLE

Coverage can not be added to your policy for increased costs to repair or replace damaged property due to the application of ordinances or laws that regulate construction, repair or demolition.

This additional coverage provides protection when a building damaged by a covered cause of loss must be repaired or rebuilt in a more costly manner because the type of construction used when the building was built does not comply with current building codes. Coverage can also be provided when laws or ordinances require the demolition of damaged buildings, including undamaged portions, prior to rebuilding in compliance with current building codes.

Contact your agent or company representative if you wish to add this coverage, or if you want additional information.

MARINE RESOURCES COMMISSION

EMERGENCY REGULATION

MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0089. Opening of Deep Water Shoal Area to Relaying.

Statutory Authority: §§ 28.2-201, 28.2-210, 28.2-507 and 28.2-816 of the Code of Virginia.

Effective Dates: April 12, 1993, to May 12, 1993.

Preamble:

This regulation opens the Deep Water Shoal Seed Area for the relaying of oysters.

VR 450-01-0089. Deep Water Shoal Seed Area to Relaying.

§ 1. Authority, effective date, and termination date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-210, 28.2-507 and 28.2-816 of the Code of Virginia.

B. The effective date of this regulation is April 12, 1993.

C. This regulation shall terminate on May 12, 1993.

§ 2. Purpose.

The purpose of this regulation is to open to the relaying of oysters that area known as the Deep Water Shoal Seed Area in the James River.

§ 3. Designated area opened to relaying.

The area described below and known as the Deep Water Shoal Seed Area within Condemnation Areas 23 and 69 in the James River is hereby opened to the relaying of oysters. The Seed Area is described as follows:

Deep Water Shoal Area: (574.66 acres) beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1 as located by Virginia State Plane Coordinates, South Zone, NAD 1927, North 302,280.00, East 2,542,360.00; thence North Azimuth 30°49'59", 4,506.99 feet to Corner 2, North 306,150.00, East 2,544,670.00; thence North Azimuth 135°08'57", 5,430.60 feet to Corner 3, North 302,300.00, East 2,548,500.00; thence North Azimuth 212°13'54", 3,487.42 feet to Corner 4, North 299,350.00, East 2,546,640.00; thence North Azimuth 269°10'16", 2,765.29 feet to Corner 5, North 299,310.00, East 2,543,875.00; thence North Azimuth 332°58'26", 3,334.09 feet to Corner 1, being the point of beginning.

§ 4. Season closure.

At such time as the harvest of oysters from the Deep Water Shoal Seed Area totals 40,000 bushels the relay

season shall close and it shall be unlawful for any person to harvest oysters from the area.

§ 5. Gear restrictions.

The harvest of oysters from the Deep Water Shoal Area by any gear other than hand tongs is prohibited.

§ 6. Permits and reporting.

Any person participating in the Deep Water Shoal Seed Area relay shall be permitted and shall report as described in §§ 28.2-810, 28.2-811, 28.2-813 and 28.2-814 of the Code of Virginia. In addition, buyers or planters shall report the final disposition of all oysters relayed on forms provided by the commission to allow an evaluation of the harvest success of the program.

§ 7. Penalty.

As set forth in § 28.2-821 of the Code of Virginia, any person violating any provisions of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt
Commissioner

GOVERNOR

EXECUTIVE ORDER NUMBER SIXTY-SIX (93)

DESIGNATING SECTION 18.2-308.2:2 OF THE CODE OF VIRGINIA AS THE CAVAZOS-DRAUGHN ACT

Trooper Jose Cavazos, a member of the Virginia Department of State Police, and Isham Draughn, II, a security guard in Richmond, were killed in the line of duty by persons using handguns. During the 1993 session, the Virginia General Assembly passed, and subsequently the Governor signed, an enactment directed at the abrogation of the illicit trafficking in handguns by limiting handgun purchases to one a month.

Virginia's history-making gun-control legislation was enacted into law for the benefit of all Virginians and is hereby dedicated to the memory of Jose Cavazos and Isham Draughn whose untimely and needless deaths gave the legislation both its impetus and urgency.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct Executive Branch agencies to refer to Section 18.2-308.2:2 of the Code of Virginia as the Cavazos-Draughn Act. I hereby request the Code Commission to consider taking necessary steps to recognize this designation in the Code.

This executive order will become effective upon its signing and will remain in full force and effect until January 15, 1994 unless rescinded or amended by further executive order.

Given under my hand and the Seal of the Commonwealth of Virginia on this sixteenth day of April, 1993.

/s/ Lawrence Douglas Wilder
Governor

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-18-000. Waterworks Regulations - Surface Water Treatment and Total Coliform.

Governor's Comment:

I approve of the form and content of these regulations.

/s/ Lawrence Douglas Wilder
Governor
Date: May 5, 1993

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

NOTICE

Notices of Intended Regulatory Action are published as a separate section at the beginning of each issue of the Virginia Register.

SECRETARY OF THE COMMONWEALTH

Notice to Counties, Cities, Towns, Authorities, Commissions, Districts and Political Subdivisions of the Commonwealth

Notice is hereby given that pursuant to § 2.1-71 of the Code of Virginia, that each county, city and town and each authority, commission, district or other political subdivision of the Commonwealth to which any money is appropriated by the Commonwealth or any of the above which levies any taxes or collects any fees or charges for the performance of public services or issues bonds, notes or other obligations, shall annually file with the Secretary of the Commonwealth a list of all bond obligations, the date and amount of the obligation and the outstanding balance therein, on or before June 30 of each year. Following is a copy of the form which may be photocopied for use herein described.

Statutory Authority: § 2.1-71 of the Code of Virginia.

Contact: Sheila A. Evans, Conflict of Interest and Appointments Specialist, P.O. Box 2454, Richmond, VA 23201-2454, or Old Finance Bldg., Capitol Square, Richmond, VA 23219, telephone (804) 786-2441.

OFFICIAL TITLE: _____

FILING FORM PER SECTION 2.1-71 OF THE CODE OF VIRGINIA - 1993
OFFICE OF THE SECRETARY OF THE COMMONWEALTH

Type of
Obligation

Date Issued

Amount
of Issue

Balance Outstanding

Type of Project
Financed

General Notices/Errata

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 reissuing the following federal OSHA notice:

U.S. Department of Labor
Occupational Safety and Health Administration
29 CFR Part 1926
(Docket S-205A)

Agency: Occupational Safety and Health Administration (OSHA) Safety Standards for Scaffolds Used in the Construction Industry

Action: Notice of proposed federal rulemaking; limited reopening of rulemaking record.

Summary: The Occupational Safety and Health Administration (OSHA) is reopening its record on the proposed standard for scaffolds used in the construction industry (subpart L) (51 FR 42680, November 26, 1986) in order to solicit comments on the issues specified herein.

First, federal OSHA believes, based on comments received in this rulemaking, that additional public comment regarding fall protection and safe means of access for employees erecting or dismantling scaffolds will better enable federal OSHA to determine what can be done to protect such employees.

Second, federal OSHA is reopening the record to add information on guardrail systems that incorporate crossbraces. The agency believes that this information is relevant to federal OSHA's decision regarding the extent to which crossbraces may be used as members in guardrail systems. Therefore, it is appropriate to provide an opportunity for public comment on this information.

Third, federal OSHA is reopening the record to seek information concerning a type of scaffolding (called chimney bracket scaffolds) used in demolishing, repairing, and erecting chimneys, stacks, and similar structures.

Text: Full text of the proposed rulemaking can be found in Volume 58, No. 58, pg. 16509 (March 29, 1993) of the Federal Register.

Dates: Written comments on proposed changes must be postmarked by May 28, 1993.

Addresses: Written comments on the proposal should be submitted in quadruplicate to the Docket Office, Docket No. S-205A, Occupational Safety and Health Administration, Room N-2634, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Comments and information received may be inspected and copied in the Docket Office.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

For further information contact: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 523-8151.

† 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 reissuing the following federal OSHA notice:

U.S. Department of Labor
Occupational Safety and Health Administration
29 CFR Part 1926
(Docket S-206A)
Safety Standards for Fall Protection in the Construction Industry

Agency: Occupational Safety and Health Administration (OSHA)

Action: Notice of proposed federal rulemaking; limited reopening of the rulemaking record for comments on precast concrete and residential construction issues.

Summary: The Occupational Safety and Health Administration (OSHA) is reopening the comment period for written responses to federal OSHA's August 5, 1992 (57 FR 34656) limited reopening of the record on fall protection regarding the appropriate fall protection measures for employees engaged in precast concrete construction. Also, federal OSHA is seeking comments on new issues raised regarding fall protection in residential construction, with particular regard to framing activities.

Text: Full text of the proposed rulemaking can be found in Volume 58, No. 58, pg. 16515 (March 29, 1993) of the Federal Register.

Dates: Written comments on proposed changes must be

postmarked by May 28, 1993.

Addresses: Comments on the proposal should be submitted in quadruplicate to the Docket Officer, Docket No. S-206A, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue., N.W., Washington, D.C. 20210.

An additional copy should be submitted to the Director of Enforcement Policy, Virginia Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

For further information contact: Mr. James F. Foster, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, N.W., Washington, D.C. 20210, telephone (202) 219-8148.

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Title of Regulation: VR 394-01-4. Virginia Amusement Device Regulations/1990.

Publication: 9:16 VA.R. 2600-2611 May 3, 1993.

Correction to Final Regulation:

Page 2610, column 2, § 2400.2, subdivision 4 should read:

4. Selection of, and [any] training of personnel.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions Through Enhanced Testing.

Publication: 9:15 VA.R. 2229 April 19, 1993.

Correction to Notice of Intended Regulatory Action:

Page 2229, column 1, change public meeting location from House Committee Room One, State Capitol Building, Richmond, Virginia at 10 a.m. to Pohick Regional Library, 6450 Sydenstriker Road, Burke, Virginia, at 10:30 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-15-04. Shenandoah River Surface Water Management Area.

Publication: 9:15 VA.R. 2236 April 19, 1993.

Correction to Notice of Intended Regulatory Action:

Page 2236, column 1, Estimated impact, line 3, after "from the" delete "James River in the Richmond Metropolitan area" and insert "Shenandoah River, including the portions of the North Fork Shenandoah River and South Fork Shenandoah River located within Warren County"

ERRATA

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 OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

May 19, 1993 - 1 p.m. – Open Meeting

May 20, 1993 - 9 a.m. – Open Meeting

June 30, 1993 - 1 p.m. – Open Meeting

Washington Building, 1100 Bank Street, Room 204, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

At this regular meeting, the board plans to discuss legislation, regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumers Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward, Secretary to the Board, identified in this notice at least 10 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

May 19, 1993 - 2 p.m. – Public Hearing

1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled **VR 115-05-01. Regulations Governing Grade "A" Milk.** The proposed regulation will continue certain authority contained in the existing regulation governing the production, processing, and sale of Grade "A" pasteurized milk and Grade "A" pasteurized milk products and certain milk products. The purpose of the present regulatory action is to review the regulation for effectiveness and continued need. The proposed regulation has been drafted to include provisions of the existing regulation and to enhance its effectiveness. In addition, certain new provisions have been established which affect milk plants, receiving station, transfer stations, producers and industry laboratories specifying: drug screening requirements of Grade "A" raw milk for pasteurization prior to processing; minimum penalties for violation of the drug residue requirements; new standards for temperature, somatic cell counts and cryoscope test; requirements to receive and retain a permit; sanitation requirements for Grade "A" raw milk for pasteurization; and sanitation requirements for Grade "A" pasteurized milk.

Statutory Authority: § 3.1-530.1 of the Code of Virginia.

Contact: J. A. Beers, Program Manager, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-1453.

June 25, 1993 – Written comments may be submitted until this date.

June 30, 1993 - 1 p.m. – Public Hearing
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to adopt regulations entitled: **VR 115-04-28. Regulations Governing the Oxygenation of Gasoline.** The purpose of the proposed regulation is to ensure that motor fuels dispensed in this Commonwealth comply with any oxygenation requirements specified by the federal Clean Air Act pertaining to motor fuels. The 1990 amendments to the federal Clean Air Act require states with carbon

monoxide nonattainment areas with design values¹ of 9.5 parts per million (ppm) or more to implement an oxygenated gasoline program in all such designated nonattainment areas. Title II of the 1990 amendments to the federal Clean Air Act requires that states institute an oxygenated gasoline program by establishing "control areas" in any Metropolitan Statistical Area (MSA) which contains one or more carbon monoxide nonattainment areas. Pursuant to such provisions, the Department of Air Pollution Control has designated as the control area the Virginia counties within the Washington, D.C. Metropolitan Statistical Area (MSA) consisting of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the Virginia cities within the Washington, D.C. MSA consisting of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The oxygen content requirement applies during the portion of the year in which the control area is prone to high ambient concentrations of carbon monoxide. The Environmental Protection Agency has established this control period (which the Board of Agriculture and Consumer Services anticipates will recur annually) to be, in the case of Virginia, a specified four months out of twelve. In Virginia this control period will begin on November 1 of one year and continue through the last day of February of the following year.

The proposed regulation (i) specifies carbon monoxide nonattainment areas; (ii) specifies the control area; (iii) specifies the control period; (iv) specifies a minimum oxygenate content in gasoline during the control period; (v) requires all persons regulated to keep records of classes of oxygenates and oxygenate content; (vi) requires gasoline pump labelling; (vii) specifies methods of sampling, testing, and oxygen content calculations; and (viii) specifies means of compliance and methods of enforcement.

¹ Design value means the calculation which is used to derive the number of carbon monoxide parts per million in the air in order to determine whether an area shall be designated a carbon monoxide nonattainment area.

Statutory Authority: §§ 59.1-153 and 59.1-156 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, Office of Weights and Measures, Department of Agriculture and Consumer Services, 1100 Bank St., Room 402, Richmond, VA 23219, telephone (804) 786-2476.

STATE AIR POLLUTION CONTROL BOARD

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Southwest Virginia Regional Air Quality Office, 121 Russell Road, Abingdon,

Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Valley of Virginia Regional Air Quality Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Central Virginia Regional Air Quality Office, 7701-03 Timberlake Road, Lynchburg, Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Northeastern Virginia Regional Air Quality Office, 300 Central Road, Suite B, Fredericksburg, Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, State Capital Regional Air Quality Office, Virginia State Library and Archives, 11th Street at Capitol Square, Lecture Room, Richmond, Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Hampton Roads Regional Air Quality Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia.

May 26, 1993 - 10 a.m. - Public Hearing
Department of Environmental Quality, Northern Virginia Regional Air Quality Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia.

June 19, 1993 - Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision MM)**. The regulation requires that owners obtain a permit prior to the construction of a major industrial/commercial facility or an expansion to an existing one locating in a prevention of significant deterioration area. The regulation prescribes the procedures and criteria for review and final action on the permit application. The proposed amendments are being made in order to make the state prevention of significant deterioration regulation conform to the federal requirements for prevention of significant deterioration new source review program.

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

Written comments may be submitted until close of business June 19, 1993, to Director of Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of

Calendar of Events

the proposal.

Contact: Karen Sabasteanski, Policy Analyst, Air Quality Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

ALCOHOLIC BEVERAGE CONTROL BOARD

May 24, 1993 - 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, Alcoholic Beverage Control Board, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

May 20, 1993 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from March 18, 1993, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) conduct regulatory review.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Interior Designers

† **May 20, 1993 - 3 p.m. – Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from February 19, 1993, meeting; (ii) review applications; and (iii) interview applicants.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Landscape Architects

May 21, 1993 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from November 16, 1992 meeting; (ii) review correspondence; and (iii)

review applications.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Land Surveyors

May 19, 1993 - 9 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from March 17, 1993, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) develop examination questions.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Professional Engineers

May 19, 1993 - 1 p.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) approve minutes from February 23, 1993 meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VIRGINIA COMMISSION FOR THE ARTS

† **June 7, 1993 - 9 a.m. – Open Meeting**
Airfield Conference Center, 15189 Airfield Road, Wakefield, Virginia. ☒

A quarterly board meeting to discuss grant awards.

Contact: Wanda T. Smith, Executive Secretary Senior, Virginia Commission for the Arts, 223 Governor St., Richmond, VA 23219, telephone (804) 225-3132.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Audiology and Speech-Language Pathology intends to amend regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed amendments is to delete

expired requirements and incorporate legislation effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2602 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-7390.

BOARD FOR BRANCH PILOTS

May 25, 1993 - 9 a.m. - Open Meeting
Virginia Pilot Association, 3329 Shore Drive, Virginia Beach, Virginia. ☒

A meeting to approve minutes from April 13, 1993 meeting, and to conduct a regular quarterly meeting of the board to consider routine business.

Contact: Willie Fobbs, III, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

May 27, 1993 - 10 a.m. - Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. ☒

The board will announce Fiscal Year 1994 Local Assistance Grant awards and will conduct general business, including review of local Chesapeake Bay Preservation Area programs. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by May 20, 1993.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Central Area Review Committee

May 26, 1993 - 10 a.m. - Open Meeting
June 30, 1993 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Central Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

May 27, 1993 - 2 p.m. - Open Meeting
July 1, 1993 - 10 a.m. - Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Northern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

May 19, 1993 - 1:30 p.m. - Open Meeting
June 21, 1993 - 1:30 p.m. - Open Meeting
City of Hampton Planning Office, Harbor Center Building, 2 Eaton Street, 9th Floor, Conference Room, Hampton, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

May 27, 1993 - 5 p.m. - Public Hearing
Roanoke City Chambers, Municipal Building, 215 Church Avenue, S.W., 4th Floor, Roanoke, Virginia.

June 1, 1993 - 5 p.m. - Public Hearing
Fairfax Government Center, 12000 Government Center Parkway Fairfax, Virginia.

June 2, 1993 - 5 p.m. - Public Hearing
Norfolk City Council Chambers, Norfolk City Hall Building, 810 Union Street, 11th Floor, Norfolk, Virginia.

June 3, 1993 - 5 p.m. - Public Hearing
NOTE: CHANGE IN LOCATION
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

Calendar of Events

June 3, 1993 – 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 Child Day-Care Council intends to adopt regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.** This regulation lists the standards that child day centers serving children of preschool age or younger must meet to be licensed by the Department of Social Services.

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

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

* * * * *

May 27, 1993 - 5 p.m. – Public Hearing
Roanoke City Chambers, Municipal Building, 215 Church Avenue, S.W., 4th Floor, Roanoke, Virginia.

June 1, 1993 - 5 p.m. – Public Hearing
Fairfax Government Center, 12000 Government Center Parkway Fairfax, Virginia.

June 2, 1993 - 5 p.m. – Public Hearing
Norfolk City Council Chambers, Norfolk City Hall Building, 810 Union Street, 11th Floor, Norfolk, Virginia.

June 3, 1993 - 5 p.m. – Public Hearing
NOTE: CHANGE IN LOCATION
General Assembly Building, 910 Capitol Square, Richmond, Virginia.

June 3, 1993 – 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 Child Day-Care Council intends to adopt regulations entitled: **VR 175-09-01. Minimum Standards for Child Day Centers Serving School Age Children.** This regulation lists the standards that child day centers serving school age children must meet to be licensed by the Department of Social Services.

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

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

May 21, 1993 - 8:30 a.m. – Open Meeting

Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Building, 109 Governor Street, 9th Floor Conference Room, Richmond, Virginia. ☒

June 18, 1993 - 8:30 a.m. – Open Meeting
Ninth Street Office Building, 202 North 9th Street, Governor's Cabinet's Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Office of the Coordinator, Interdepartmental Regulation, 730 East Broad St., Richmond, VA 23219-1849, telephone (804) 662-7124 (after May 2, 1993 (804) 692-1960).

BOARD OF COMMERCE

May 19, 1993 - 7 p.m. – Public Hearing
Tysons Corner Holiday Inn, 1960 Chain Bridge Road, McLean, Virginia. ☒

May 26, 1993 - 1 p.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A public hearing connected with the board's study of the feasibility of establishing a licensing program for home inspectors. The study is a result of the Virginia Senate's Joint Resolution 254, which passed during the 1993 session of the Virginia General Assembly.

Contact: Joyce K. Brown, Secretary to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.
Newport News Omni, 1000 Omni Way Boulevard, Newport News, Virginia. ☒

May 19, 1993 - 1 p.m. – Public Hearing
Holiday Inn Tysons Corner, 1960 Chain Bridge Road, McLean, Virginia. ☒

May 26, 1993 - 9 a.m. – Public Hearing
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A public hearing connected with the board's study of the feasibility of establishing a licensing program for property managers of condominiums, townhouses, and other similar common interest communities. The study is a result of the Virginia House of Delegates Joint Resolution 618, which passed during the 1993 session of the Virginia General Assembly.

Contact: Joyce K. Brown, Secretary to the Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.

COMPENSATION BOARD

May 26, 1993 - 5 p.m. - Open Meeting
Ninth Street Office Building, 202 North 9th Street, 9th Floor, Room 913/913A, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A routine meeting to conduct business of the board.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23206-0710, telephone (804) 786-3886 or (804) 786-3886/TDD

BOARD FOR CONTRACTORS

May 19, 1993 - 9 a.m. - Open Meeting
3600 West Broad Street, Conference Room 2, Richmond, Virginia.

A meeting of the Regulatory/Statutory Review Committee to determine needed changes, additions and revisions in procedures, requirements and standards applicable to Class B and Class A licenses.

Contact: Florence R. Brassier, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8557.

Complaints Committee

June 9, 1993 - 8 a.m. - Open Meeting
3600 West Broad Street, 4th Floor, Conference Room 1, Richmond, Virginia.

A general meeting.

Contact: A. R. Wade, Assistant Director, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-0136.

Recovery Fund Committee

June 16, 1993 - 9 a.m. - Open Meeting
3600 West Broad Street, Richmond, Virginia.

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF EDUCATION (BOARD OF)

May 27, 1993 - 2 p.m. - Open Meeting
May 28, 1993 - 8:30 a.m. - Open Meeting
The College of William and Mary, Williamsburg, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, State Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2973 or toll-free 1-800-292-3820.

May 21, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: VR 270-01-0007. Regulations Governing Special Education Programs for Children with Disabilities in Virginia. The revised regulations outline the requirements for the provision of special education programs. Areas of coverage include identification, eligibility, service delivery, funding, personnel qualifications, procedural safeguards, local school division responsibilities, and Department of Education responsibilities.

Statutory Authority: §§ 22.1-214 and 22.1-215 of the Code of Virginia.

Contact: Anne P. Michie, Specialist, Federal Program Monitoring, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2013 or toll-free 1-800-292-3820.

June 24, 1993 - 8:30 a.m. - Public Hearing
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

July 17, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia. The purpose of the proposed amendments is to (i) include language required by the 1989 and 1990 sessions of the General Assembly relating to the ceiling on indebtedness to the fund and consolidation incentives; (ii) include changes by the 1991 session to § 22.1-140 of the Code of Virginia; and (iii) increase the maximum loan amount available for constructing a new single school from \$2.5 million to \$5 million.

STATEMENT

Purpose: The existing regulations provide an efficient and

Calendar of Events

equitable process for the State Board of Education to manage the Literary Fund for the benefit of local school divisions throughout the Commonwealth.

Issues: The proposed changes are being promulgated to bring the regulations into conformance with § 22.1-140 of the Code of Virginia as amended by the 1991 session of the General Assembly, to provide publication of 1990 changes made in response to legislative requirements from the 1989 and 1990 sessions and to increase the maximum loan limit due to the rising cost of building new schools.

Substance: The proposed changes affect several sections of the regulations. They are:

Sections 4.2, 7.1 and 8.5 have been amended and previous § 4.3 deleted to have the regulations consistent with § 22.1-140 of the Code of Virginia. This requires divisions to submit final plans, approved by the division superintendent and architect, rather than having all plans approved by the Department of Education.

2. Section 5.1 has been amended and § 5.2 deleted to provide more funds to local school divisions to construct new schools. The changes will allow divisions to borrow \$5 million to construct a new school and maintain the current limit of \$2.5 million for renovations and additions.

3. Sections 5.3 and 7.2 have been amended and § 7.6 added to have the regulations consistent with language amendments which were included in the Appropriation Acts by the 1989 and 1990 sessions of the General Assembly. These changes increased the ceiling on outstanding indebtedness to the fund from \$15 million to \$20 million, increased the incentive for two or more divisions to consolidate from \$1 million to \$2 million, and provided priority funding for any application resulting directly from the consolidation of two or more divisions.

Estimated impact:

A. Entities affected: All local school divisions throughout the Commonwealth are eligible to apply for loans from the Literary Fund. Therefore, any locality who makes an application after the effective date of the amended regulations will be eligible for additional funding.

B. Fiscal impact:

1. Costs to affected entities: The proposed regulations would allow localities to borrow additional funds at the lower interest rates provided through the Literary Fund. Therefore, the fiscal impact to affected entities would be positive over the 20 years of debt service required to the Literary Fund.

2. Costs to agency: There are no direct costs attributable to the State Board of Education or the

Department of Education. Increasing the loan amount makes no impact on the procedures used to make loans.

3. Source of agency funds: All funds for loans to local school divisions are from the Literary Fund. Since we are increasing the maximum amount of an individual loan, fewer loans will be made with the same level of funding available in the Literary Fund. However, current practices have allowed localities to receive multiple loans for the construction of one school through a phased approach. The amended regulations will disallow the phased approach and address the need for additional funding in a straight forward manner.

Basis: Article VIII, Section 8 of the Constitution of Virginia gives the Board of Education responsibility and authority over the administration of the Literary Fund. Further, §§ 22.1-142 through 22.1-154 of the Code of Virginia give the board general authority over literary loan applications and management of the fund. Section 22.1-147 specifically permits the board to impose a maximum limit of not more than \$5 million on the amount of any loan from the fund.

Statutory Authority: §§ 22.1-140 and 22.1-142 of the Code of Virginia, § 8 of Article VIII of the Constitution of Virginia.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2025.

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June 18, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: **VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.** The regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review board to oversee all research involving students that is conducted within the realm of its authority.

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Contact: Lawrence McCluskey, Lead Specialist, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2762.

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June 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to adopt regulations entitled: VR 270-01-0057. **Special Education Program Standards.** These regulations set standards for special education programs for children with disabilities in Virginia. Criteria are set forth for teaching endorsements, waivers for certain educational interpreters, and program models for school-age and preschool-age students.

Statutory Authority: § 22.1-214 of the Code of Virginia.

Contact: Dr. Patricia Abrams, Principal Specialist, Special Education, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2874, toll-free 1-800-292-3820 or toll-free 1-800-422-1098/TDD ☎

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

† July 16, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services intend to amend regulations entitled: VR 270-01-0003, VR 470-02-01, VR 615-29-02, VR 690-40-004. **Standards for Interdepartmental Regulation of Residential Facilities for Children.** This regulation is designed to assure adequate care, treatment, and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing intake and service planning.

STATEMENT

Basis: Sections 16.1-311, 22.1-321, 22.1-323.2, 37.1-10, 37.1-182, 37.1-189.1, 63.1-25, 63.1-196.4, 66-10 and 66-24 of the Code of Virginia provide the departments' statutory authority to promulgate standards for regulation of residential facilities for children. The State Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services have approved the proposed revisions for a 60-day period of public comment.

Purpose: The regulation is designed to assure that adequate care, treatment and education are provided by children's residential facilities. The proposed revisions amend and clarify requirements governing intake and service planning.

Substance: The regulation is designed to assure that adequate treatment, care and education are provided by children's residential facilities.

Issues: The proposed revisions are designed to increase emphasis on treatment and services, clarify the types of admissions, decrease emphasis on paperwork, increase opportunities for use of professional judgment by providers and regulators, increase providers' flexibility to address the components of intake and service planning, simplify the requirements, and eliminate unnecessary and redundant requirements.

Impact: Approximately 155 children's residential facilities are subject to the regulation and are currently regulated under substantially similar requirements. No financial impact is anticipated. Providers that continue using their present intake and service planning documents will experience little impact. Some providers are anticipated to redesign their intake and service planning documents and tailor them to the facility's client population. Staff resources must be allocated by providers electing to redesign their documents; likewise, staff resources must be allocated to the review approval process by regulatory personnel. The need for providers to request and for regulators to process variance requests will be significantly reduced as a result of simplified requirements which are generically applicable to all types of facilities. The intake and service planning process will be improved due to simplified requirements, increased flexibility, simplified methods for maintaining and assessing compliance, and increased opportunities for use of professional judgment by providers and regulators. These improvements are anticipated to contribute to an enhanced relationship among providers and regulators.

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

Written comments may be submitted through July 16, 1993, to Rhonda M. Harrell, Office of Interdepartmental Regulation, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: John J. Allen, Jr., Coordinator, Office of Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE BOARD OF ELECTIONS

May 28, 1993 - 10 a.m. – Open Meeting
Ninth Street Office Building, 200 North 9th Street, 6th Floor Conference Room, Room 625, Richmond, Virginia. ☒

The board will meet with representatives of the Business Records Corporation regarding servicing of voting equipment.

Contact: Margaret O. "Jane" Jones, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551 or toll-free 1-800-552-9745.

Calendar of Events

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

June 3, 1993 - 5:30 p.m. - Open Meeting
Chesterfield County Administration Building, 10,001
Ironbridge Road, Room 502, Chesterfield, Virginia. ☒

A meeting to meet requirements of Superfund
Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services
Coordinator, Chesterfield Fire Department, P.O. Box 40,
Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

May 17, 1993 - 1:30 p.m. - Open Meeting
One County Complex Court, Potomac Conference Room,
Prince William, Virginia. ☒

A multi-jurisdictional local emergency planning
committee to discuss issues related to hazardous
substances in the jurisdictions. SARA Title III
provisions and responsibilities for hazardous material
emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, One
County Complex Court, Internal Zip MC470, Prince
William, VA 22192, telephone (703) 792-6800.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **June 2, 1993 - 3 p.m.** - Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard,
Winchester, Virginia.

A general meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire and
Rescue Department, 126 N. Cameron St., Winchester, VA
22601, telephone (703) 662-2298.

DEPARTMENT OF ENVIRONMENTAL QUALITY

May 20, 1993 - 10 a.m. - Open Meeting
Madison Building, 109 Governor Street, Main Conference
Room, Richmond, Virginia.

A meeting to discuss the proposed changes to
Hazardous Waste Management Regulations for
incorporation of US EPA revisions to wood preserver
rules.

Contact: William F. Gilley, Regulation Consultant, 101 N.
14th St., 11th Floor, Richmond, VA 23219, telephone (804)

225-2966.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

July 2, 1993 - Written comments may be submitted
through this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the Board of Funeral
Directors and Embalmers intends to amend regulations
entitled: **VR 320-01-04. Regulations of the Resident
Trainee Program for Funeral Service.** The proposed
amendments add a definition of direct supervision,
reformat the fee section, place a maximum time limit
on trainee programs, and establish reporting and
supervision requirements for the registered trainee.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code
of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board
of Funeral Directors and Embalmers, 6606 W. Broad St.,
4th Floor, Richmond, VA 23230, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

May 20, 1993 - 2 p.m. - Open Meeting
May 21, 1993 - 9 a.m. - Open Meeting
Northern Virginia, 4-H Center, Front Royal, Virginia.

The board and agency director will hold a facilitated
workshop to discuss and identify the roles of the
board and the agency director, and to develop
performance standards for the director, as well as
conduct an annual performance review evaluation of
the director.

June 17, 1993 - 9 p.m. - Open Meeting
Holiday Inn I-64 West End, 6531 West Broad Street,
Richmond, Virginia.

The board will convene its meeting at 9 a.m. and
immediately recess for their committee meetings,
beginning with the Wildlife and Boat Committee,
followed by the Planning Committee, Finance
Committee, Liaison Committee and Law and Education
Committee meetings.

In the Wildlife and Boat Committee, proposed
advertised changes to the 1993-94 and 1994-95 hunting
season, bag limits, etc. and aids to boating navigation
will be reviewed and discussed.

During the Planning Committee meeting, members will
discuss the board's funding initiative, and further
consider implementation of recommendations made by
the HJR-191 Legislative study committee that reported
on the management and organizational structure of the
department.

Calendar of Events

During the Finance Committee meeting, members will review the department's financial status report, proposed regulations concerning appointment and dismissal of license agents, and any other necessary matters appropriate to this committee's authority.

At the notice of this meeting, agenda items have not been posted for the Liaison and Law and Education Committees. If necessary, these committees will meet and discuss matters appropriate to their authority.

June 18, 1993 - 9 a.m. - Open Meeting
Holiday Inn I-64 West End, 6531 West Broad Street, Richmond, Virginia.

The board will reconvene its meeting with an executive session at 8 a.m. They will recess or adjourn the executive session at 9 a.m. and convene the public meeting. During the public meeting, the board will hear and consider changes to the 1993-94 and 1994-95 hunting seasons and related regulations, aids to boating navigation regulations and regulations on the appointment and removal of license agents. These changes may alter the proposed regulations significantly in response to public comment or staff recommendations. In addition, public comment will be heard, and if adopted, these changes will become effective as final regulations. Other general and administrative matters, as necessary, will be considered, with appropriate actions taken by the board.

Contact: Belle Harding, Secretary, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

GOVERNOR'S ADVISORY BOARD ON AGING

June 10, 1993 - 1 p.m. - Open Meeting
June 11, 1993 - 1 p.m. - Open Meeting
The Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia. ☐ (Interpreter for the deaf provided upon request)

A regular business meeting, including work sessions for the board's standing committees. The board will review legislation passed by the 1993 Session of the General Assembly and plan future activities.

Contact: Bill Peterson, Human Resources Coordinator, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2803 or (804) 225-2271/TDD ☎

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

† **May 24, 1993 - 10:30 a.m. - Open Meeting**
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia. ☐ (Interpreter for the deaf provided

upon request)

A general meeting. The council welcomes any comments and suggestions.

Contact: Abria M. Singleton, Executive Secretary, 4615 W. Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816, toll-free 1-800-552-7020 or (804) 367-6283/TDD ☎



DEPARTMENT OF HEALTH (STATE BOARD OF)

June 2, 1993 - 10 a.m. - Open Meeting
Virginia Tech Seafood Experiment Station, 102 South King Street, Hampton, Virginia.

A meeting to discuss industry/state policies regarding vibrio vulnificus.

Contact: Keith Skiles, Shellfish Program Manager, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-7937.

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June 7, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-39-100. Regulations Governing Eligibility Standards and Charges for Health Care Services to Individuals.** The proposed amendments (i) change the basis for charges from costs to Medicaid's current payment schedules; (ii) change the eligibility requirements to more closely match those used to determine Medicaid eligibility; (iii) increase local decision making as to what services are provided; (iv) simplify and make more useful the waiver process; and (v) correct references to the Code of Virginia as necessary.

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

Contact: Dave Burkett, Director of Reimbursement, Virginia Department of Health, P.O. Box 2448, Room 239, Richmond, VA 23218, telephone (804) 371-4089.

Commissioner's Waterworks Advisory Committee

May 20, 1993 - 10 a.m. - Open Meeting
400 South Main Street, 2nd Street, Culpeper, Virginia.

Calendar of Events

A meeting to conduct general business of the committee.

Contact: Thomas B. Gray, P.E., Special Project Engineer, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-1768.

BOARD OF HEALTH PROFESSIONS

Ad-Hoc Committee on Practitioner Self-Referral

† **May 24, 1993 - 1 p.m. – Open Meeting**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☒

The committee will organize its work to draft proposed regulations to implement the Virginia Self-Referral Act (1993 Virginia Acts of Assembly, Chapter 869). This is an open meeting. Public comments on the rulemaking process only will be received from 1 p.m. to 2 p.m.

Contact: Richard D. Morrison, Ph.D., Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

May 25, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting followed by a public hearing on the rules and regulations (VR 370-01-001 and VR 370-01-002). The public hearing will begin at noon.

June 22, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☒

A monthly meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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May 25, 1993 - Noon – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

May 25, 1993 – 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 purpose of the proposed amendments is to amend the agency's regulations to conform to the new methodology adopted by the Virginia Health Services Cost Review Council to measure efficiency and productivity of health care institutions.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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May 25, 1993 - Noon – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

May 25, 1993 – 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 adopt regulations entitled: **VR 370-01-002. Regulations to Measure the Efficiency and Productivity of Health Care.** The purpose of the proposed regulation is to establish a new methodology to measure the efficiency and productivity of health care institutions.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

May 17, 1993 - 8:30 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) conduct examinations to eligible candidates; (ii) review enforcement cases; (iii) conduct regulatory review; and (iv) consider other matters which may require board action.

Contact: Gerald W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

NOTE: CHANGE IN MEETING DATE.

June 1, 1993 - 9:30 a.m. - Open Meeting
101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia. ☒

A general business meeting. For additional information contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

DEPARTMENT OF HISTORIC RESOURCES

May 17, 1993 - 7 p.m. - Public Hearing
Cedar Lee Middle School, Bealton, Virginia. ☒ (Interpreter for the deaf provided upon request)

May 18, 1993 - 7 p.m. - Public Hearing
Culpeper Middle School, 500 Achievement Drive, Culpeper, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public hearing to receive comment on the Virginia Board of Historic Resources' reconsideration of the designation of the Brandy Station Battlefield Historic District in Culpeper and Fauquier counties.

May 20, 1993 - 7:30 p.m. - Open Meeting
One County Complex Court, James McCoart Building, Occoquan River Conference Room, Prince William, Virginia. ☒ (Interpreter for the deaf provided upon request)

A public meeting to receive comment on the Virginia Board of Historic Resources' reconsideration of the designation of the Bristoe Battlefield Historic District in Prince William County.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

Board of Historic Resources

† June 23, 1993 - 10 a.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to reconsider the listing of the Brandy Station Battlefield Historic District in Culpeper and Fauquier Counties and the Bristoe Station Battlefield Historic District in Prince William County on the Virginia Landmarks Register.

Contact: Margaret Peters, Information Director, 221

Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

State Review Board and the Board of Historic Resources

† June 16, 1993 - 10 a.m. - Open Meeting
Library at Blandly Farm, State Arboretum, Route 50, Boyce, Virginia. ☒

A meeting to consider the nomination of the following properties to the Virginia Landmarks Register and the National Register of Historic Places.

Downtown Danville Historic District
Meadea, Clarke County
Lucky Hit, Clarke County
Shenandoah County Farm, Shenandoah County

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

June 1, 1993 - 9 a.m. - Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☒ (Interpreter for deaf provided upon request)

A Local Emergency Preparedness Committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

May 18, 1993 - 11 a.m. - Open Meeting
601 South Belvidere Street, Richmond, Virginia. ☒

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

Calendar of Events

COUNCIL ON INFORMATION MANAGEMENT

May 21, 1993 - 9 a.m. - Open Meeting
1100 Bank Street, 9th Floor, Richmond, Virginia. ☒

A regularly scheduled meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

June 14, 1993 - 1 p.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices by June 7, 1993.

Contact: Robert H. Kirby, Secretary, 8th Street Office Building, Room 702, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

STATE LOTTERY BOARD

May 24, 1993 - 10 a.m. - Open Meeting
2201 West Broad Street, Richmond, Virginia. ☒

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-9433.

VIRGINIA MANUFACTURED HOUSING BOARD

May 19, 1993 - 10 a.m. - Open Meeting
Department of Housing and Community Development, 501 North 2nd Street, 2nd Floor Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A regular monthly meeting to review public input and suggestions for draft of Manufactured Housing Licensing and Transaction Recovery Fund Regulations.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Code Enforcement Office, The Jackson Center, 501 N. 2nd St.,

Richmond, VA 23219-1321, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

May 21, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **State Plan for Medical Assistance Relating to Interim Settlement/Prospective Rate Time Frames, Audited Financial Statements, and Appeal Notice Requirements. VR 460-03-4.1940:1. Nursing Home Payment System (PIRS).** The purpose of this proposal is to promulgate permanent regulations to supersede emergency regulations which change from 90 to 180 days the time frame within which cost reports filed pursuant to the Nursing Home Payment System are interim settled and a prospective rate set. In addition, this proposed regulation will require nursing facilities to file audited financial statements and related information as part of their annual cost report, and will change the appeal time frames from calendar days to business days, and from receipt of a notice or decision to date of a notice or decision.

Interim settlement/prospective rate time frames: Before the adoption of emergency regulations effective August 3, 1992, DMAS regulations and policy required that providers' cost reports be interim settled and a prospective rate set within 90 days after an acceptable cost report is received. Providers, prompted in part by changes in the Internal Revenue Code, were increasingly changing their fiscal year periods to a calendar year cost reporting period. Despite increasing the Cost Settlement staff in recent years, DMAS was unable to meet regulatory and policy timelines in the face of the increasingly lopsided filing periods. After review, DMAS concluded that adding more staff to meet a seasonal workload would not be a cost effective use of resources. This extension of time was expected to permit DMAS to even out the workload by moving some of it from the peak workload periods during the second and fourth calendar quarters to the lower workload periods in the third and first calendar quarters. The amendment was also expected to increase provider confidence in the rate-setting process and enhance staff morale.

Audited financial statements: The cost reports filed annually by nursing facilities are currently required to be accompanied by financial statements. In addition, a home office report must be filed, if applicable.

Providers are now required to file audited financial statements with the Virginia Health Services Cost Review Council. Accordingly, it would impose no

burden on providers to require that they supply the same information to DMAS, and would enhance DMAS' performance of its mission.

Appeal notice requirements: Since 1986, DMAS has used certified mail to nursing facilities to advise them of deadlines or actions DMAS will take if a response is not received by a specific date, for example, due dates for noting appeals, or rate reductions for failure to file cost reports on time. As a result of an employee suggestion and a review of the program's experience, certified mail will no longer be used for nursing facilities (except for final decisions signed by the DMAS director). To compensate for the earlier start of the timeclock, time will be measured by business days instead of calendar days.

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

Written comments may be submitted through May 21, 1993, to William R. Blakely, Jr., Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

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June 4, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: VR 460-04-8.7. Client Appeals Regulations. The purpose of this proposal is to amend regulations governing the management and conduct of client appeals for the Medicaid program.

The Code of Federal Regulations § 431 Subpart E contains the federal requirements for fair hearings for applicants and recipients. This subpart, in implementing the Social Security Act § 1902 (a)(3), requires that the State Plan for Medical Assistance provide an opportunity for a fair hearing to any person whose claim for assistance is denied or not acted upon promptly. Hearings are also available for individuals if Medicaid takes action to suspend, terminate, or reduce services. The State Plan conforms to this requirement on preprinted page 33.

The Virginia General Assembly amended the Administrative Process Act effective July 1, 1989, to allow judicial review of public assistance case decisions. While granting recipients the right to judicial review, the General Assembly limited the scope of that review to the application of the law to

an individual case; the validity of the law itself is not subject to review. At that time, the DMAS revised its administrative procedures for recipient appeals, replacing its then current Medicaid Appeals Board with a panel of administrative law judges. The client appeals system now provides for two levels of review of Medicaid recipients' and applicants' appeals. The first level is a hearing officer's decision and the second is a decision by a panel of administrative law judges.

On July 8, 1992, a class action lawsuit was filed in Federal District Court (Shifflett, et al. v. Kozlowski, C.A. No. 92-0071H, Western District of Virginia, Harrisonburg Division) challenging the timeliness of administrative decisions. Federal law requires that a final agency decision be issued within 90 days. Panel review is not a process required by federal law. The 90-day federal limit cannot be met if panel review is included. This timeliness issue is being pressed in this litigation. These proposed regulatory amendments are designed to resolve the issue by requiring an appellant to acknowledge the nonapplicability of the 90-day requirement to panel review as a condition of appeal. They also give an appellant the right to seek judicial review directly from the decision of the hearing officer. Panel review thus becomes optional with the appellant.

An issue has also been raised regarding DMAS receiving federal matching dollars (FFP) for benefits paid during appeals after the 90-day period. Accordingly, the regulations have been amended to permit benefits only through the hearing officer level of the appeal.

These proposed regulations are intended to address the issues raised in the earlier referenced lawsuit as well as other issues deemed by DMAS as requiring revision.

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

Written comments may be submitted through June 4, 1993, to Thomas J. Czelusta, Sr., Administrative Law Judge, Department of Medical Assistance Services, Division of Client Appeals, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

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May 25, 1993 - 10 a.m. - Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

May 26, 1993 - 9 a.m. - Public Hearing

Calendar of Events

Norfolk City Council Chambers, City Hall Building, 810 Union Street, 11th Floor, Norfolk, Virginia.

† May 27, 1993 - 10 a.m. - Public Hearing
Conference Center Rooms 4 and 5, 12000 Government Center Parkway, Fairfax, Virginia.

June 18, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: VR 460-03-3.1100, 460-02-3.1300, VR 460-03-3.1301, VR 460-04-3.1300, VR 460-04-8.10. **Criteria for Nursing Home Preadmission Screening and Continued Stay; Technical Amendments.** The purpose of this proposal is to provide permanent regulations which supersede existing emergency regulations, and clarify the requirements and the process for ensuring that appropriate criteria for placing recipients in nursing facilities are met.

DMAS promulgated an emergency regulation for these criteria effective September 1, 1992. This regulatory package represents the agency's suggested proposed regulations to begin the permanent rule making process. These criteria are used by local screening teams to approve or deny Title XIX (Medicaid) payment for nursing facility or community-based care services.

Nursing home preadmission screening was implemented in Virginia in 1977 to ensure that Medicaid-eligible individuals placed in nursing homes actually required nursing home care. In 1982, DMAS obtained approval for a Section 2176 Home and Community-Based Care waiver to allow individuals who have been determined to require nursing facility services an alternative to nursing home placement. This alternative to nursing home care has become the Home and Community-Based Care Services program and offers such services as personal care, respite care, and adult day health care.

In 1989, DMAS revised a portion of the regulations related to nursing home preadmission screening to incorporate the requirement to screen all individuals for conditions of mental illness or mental retardation.

Section 32.1-330 of the Code of Virginia designates that the definition for eligibility to community based services will be included in the State Plan for Medical Assistance. In the existing emergency regulations, nursing needs are defined only by example of the types of nursing services which indicate a need for nursing facility care. This proposed regulation adds a definition for medical and nursing needs and clarifies and expands the list of the types of services which are provided by licensed nursing or professional personnel. It also defines imminent risk of nursing

facility placement.

This proposed regulation, as does the existing emergency regulation, contains additional sections which summarize the requirements which must be met to find an individual eligible for nursing facility care and/or community based care. The list of specific care needs which do not qualify an individual for nursing facility care has been clarified, expanded, and moved to the summary section. The evaluation section clarifies specific criteria for determining when an individual is at imminent risk of nursing home placement and can be authorized for community-based care placement. It also requires the evaluator to document that a community-based care option has been explored and explained to the client and/or client's primary caregiver prior to authorizing nursing facility care.

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1, Attachment 3.1 C: The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the plan into compliance with the 1992 Appropriation Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types. The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in VR 460-04-8.10, Long-Stay Acute Care Hospital Regulations, which are state-only regulations.

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

Written comments may be submitted through June 18, 1993, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

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

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† **July 16, 1993** – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates—Inpatient Hospital Services: Hospital Reporting Requirements.** The purpose of the proposed amendments is to require providers to submit additional financial, statistical and structural information for submission of completed cost reports, and to enable DMAS to make its annual findings and assurances. The regulations will impose a penalty for the failure to submit cost reports and the supplemental information within the required time frames.

The current regulation requires that the provider submit the completed cost report forms, the provider's trial balance, and its financial statements including the balance sheet, income statement, statement of retained earnings, and a statement of changes in financial position together with footnotes to the financial statement. The regulation also requires the submission of a home office cost report, where applicable, and the submission of schedules reconciling the financial statements and trial balance to the costs claimed in the cost report. The existing regulation provides that cost reports will not be considered complete by DMAS until all of the required information is received. Also, there is no penalty provision for the late submission of cost reports.

The proposed regulation requires the submission of two classes of information: (i) information that must be received within 90 days after the close of the provider's fiscal year (this information must be received before the filing of the cost report will be deemed complete); and (ii) financial, statistical and structural information that must be received by DMAS within 120 days after the close of the provider's fiscal year.

Section VI(C) of the proposed regulation imposes a penalty for the failure to submit the required information in a timely manner. This provision is being added as the result of a recent audit recommendation from the Health Care Financing Administration (HCFA). Receipt of the information submitted pursuant to this regulatory change is necessary in order for DMAS to complete its analysis of hospital costs necessary for preparation of its structured, federally-mandated findings and assurances.

STATEMENT

Basis and authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:7.1, for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

Title 42, §§ 447.250 through 447.272 of the Code of Federal Regulations implement § 1902(a)(13)(A) of the Social Security Act and require DMAS to make a series of findings and assurances regarding the Commonwealth's payment rates. The regulations being proposed will assist the Commonwealth in the satisfaction of this requirement by providing additional information that will facilitate the findings and assurances process.

Purpose: The purpose of this proposal is to promulgate regulations that require providers to submit additional financial, statistical and structural information for the following purposes: (i) for submission of completed cost reports; (ii) to enable DMAS to make its annual findings and assurances. The regulations will impose a penalty for the failure to submit cost reports and the supplemental information within the required time frames.

Summary and analysis: The section of the State Plan for Medical Assistance affected by this action is Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (Attachment 4.19 A).

The current regulation requires that the provider submit the completed cost report forms, the provider's trial balance, and its financial statements including the balance sheet, income statement, statement of retained earnings, and a statement of changes in financial position together with footnotes to the financial statement. The regulation also requires the submission of a home office cost report, where applicable, and the submission of schedules reconciling the financial statements and trial balance to the costs claimed in the cost report. The existing regulation provides that cost reports will not be considered complete by DMAS until all of the required information is received. Also, there is no penalty provision for the late submission of cost reports.

The proposed regulation requires the submission of two classes of information: (i) information that must be received within 90 days after the close of the provider's fiscal year (this information must be received before the filing of the cost report will be deemed complete); and (ii) financial, statistical and structural information that must be received by DMAS within 120 days after the close of the provider's fiscal year.

In addition to what was required by the existing regulation, the proposed regulation requires that all

Calendar of Events

providers submit audited financial statements and detailed schedules of the restricted cash funds, investments and notes and mortgages payable, and a schematic diagram of the business and control structure of the parent company, the provider and all related entities. Providers that are members of a chain organization must also file the following information under the proposed regulation: audited consolidated financial statements, and detailed information regarding the members of the boards of directors or trustees of all entities shown on the schematic diagram. This additional information will permit DMAS to expand its review of the hospital's cost reports and the overhead cost of an efficient and economical hospital operation. Previously, the financial statements were not required to be audited statements. The Auditor of Public Accounts has recommended that audited financial statements be obtained to ensure the accuracy of the financial information contained in the cost report.

Within 120 days after the end of the provider's fiscal year, additional financial, statistical and structural information is required to be filed. None of the information contained in § VI(B) of this proposed regulation, is required by the existing regulation. This additional information must be supplied by all providers except Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) providers. Hospitals administered by DMHMRSAS are to be exempted from this additional information requirement. These hospitals are retrospectively reimbursed, as contrasted with all the other prospectively reimbursed hospitals, and are already constrained by the upper payment limits established for the Title XVIII Medicare program.

Section VI(C) of the proposed regulation imposes a penalty for the failure to submit the required information in a timely manner. This provision is being added as the result of a recent audit recommendation from the Health Care Financing Administration (HCFA).

All of the required information should be accumulated by providers engaged in proper financial management.

Title 42, §§ 447.250 through 447.272 of the Code of Federal Regulations requires DMAS to make a series of annual findings and assurances with respect to the state plan. Findings and assurances are also required with respect to all proposed amendments to the State Plan when changes in payment methods and standards are made. While the current findings and assurances process has not been found to be inadequate and while current regulations do not define the findings process, recent court decisions have defined the procedural requirements that a state must take in order for its findings and assurances to be adequate. DMAS has adopted a structured approach for the development and production of the findings and assurances, as described in these cases. Receipt of the information submitted pursuant to this regulatory change is necessary in order for DMAS to complete its analysis of hospital costs necessary for preparation of its structured findings and assurances.

Impact: The proposed regulation is not expected to increase costs to the Commonwealth beyond the additional time required to review the new information and correlate it to costs which should be covered in providers' cost reports. The providers already are required to produce the information required by the regulation. All providers will be impacted by the cost of copying and transmitting the required information. These costs are reported as allowable costs in the cost report and therefore covered by DMAS in the established per diem rate. Providers filing more than 180 days after their fiscal year end (FYE) will be impacted by the penalty provisions of the regulation. For the 1992 fiscal year, 114 hospital providers filed cost reports. Of that number, no provider filed a cost report more than 180 days after its FYE.

Forms: No new forms are required to implement this proposed regulation. The existing forms required to administer this regulation are: HCFA 2552 and VMAP 783.

Evaluation: DMAS in cooperation with HCFA will monitor the providers' compliance with these regulations as part of its ongoing Plan management activities.

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

Written comments may be submitted until 5 p.m. on July 16, 1993, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

Drug Utilization Review Board

June 24, 1993 - 3 p.m. – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting. Routine business will be conducted.

Contact: Carol B. Pugh, Pharm.D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

June 3, 1993 - 8 a.m. – Open Meeting
June 4, 1993 - 8 a.m. – Open Meeting
June 5, 1993 - 8 a.m. – Open Meeting
June 6, 1993 - 8 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street,
4th Floor, Richmond, Virginia. ☐

The Board of Medicine will meet on June 3, 1993, in open session, to conduct general board business,

receive committee and board reports, and discuss any other items which may come before the board. The board will also meet on June 3, 4, 5, and 6 to review reports, interview licensees, and make case decisions on disciplinary matters. The board will also review any regulations that may come before it. The president may entertain brief public comments at the beginning of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

Credentials Committee

June 4, 1993 - 8:15 p.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☒

The committee will meet in open and closed sessions to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia and discuss any other items which may come before the committee. The committee will receive public comments from those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD)

May 26, 1993 - 10 a.m. – Open Meeting
Pittsylvania-Danville CSB, Danville, Virginia. ☒

A regular monthly meeting. Agenda to be published on May 19. Agenda may be obtained by calling Jane Helfrich.

Tuesday	Informal session	8 p.m.
Wednesday	Committee meetings	9 a.m.
	Regular session	10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

State Human Rights Committee

† **June 4, 1993 - 9 a.m. – Open Meeting**
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, 13th Floor Conference Room, Richmond, Virginia. ☒

A regular meeting to discuss business relating to human rights issues. Agenda items are listed for the meeting.

Contact: Elsie D. Little, State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

May 20, 1993 - 1 p.m. – Open Meeting
Virginia Military Institute, Smith Hall, Lexington, Virginia. ☒

Finals meeting of the Board of Visitors. Also, a regular meeting to (i) discuss committee reports; (ii) approve awards, distinctions and diplomas; (iii) discuss personnel changes; and (iv) elect president pro tem.

Contact: Colonel Edwin L. Dooley, Jr., Secretary to the Board, Superintendent's Office, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206.

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

May 18, 1993 - 2 p.m. – Open Meeting
Virginia Museum Galleries, 2800 Grove Avenue, Richmond, Virginia. ☒

A meeting to consider gifts and purchase of works of art, and to review loan recommendations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Finance Committee

May 20, 1993 - 11 a.m. – Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia. ☒

A meeting to conduct a year-end review of financial statements and to discuss enterprise operations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

May 20, 1993 - Noon – Open Meeting
Virginia Museum of Fine Arts, Virginia Museum Auditorium, Boulevard and Grove Avenue, Richmond,

Calendar of Events

Virginia. ☐

A meeting to receive reports from committees, officers and staff, and to conduct budget review and yearly overview of operations.

Contact: Emily C. Robertson, Secretary, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

STATE NETWORKING USERS ADVISORY BOARD

May 19, 1993 - 1 p.m. – Open Meeting
Lee Library, Chatham Hall, Chatham, Virginia.

A meeting to discuss administrative matters of the board.

Contact: Judith Lowry, Secretary, Library Development, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2321 or toll-free 1-800-336-5266.

BOARD OF OPTOMETRY

May 20, 1993 - 8 a.m. – Open Meeting
The Hilton, 50 Kingsmill Road, Room #15, Williamsburg, Virginia. ☐

An informal conference committee meeting.

May 20, 1993 - 9 a.m. – Open Meeting
The Hilton, 50 Kingsmill Road, Room #15, Williamsburg, Virginia. ☐

A general board meeting. Regulatory review will be conducted. Brief public comments will be received at the beginning of the board meeting.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

BOARD OF PHARMACY

July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-1. Regulations of the Virginia Board of Pharmacy.** The purpose of the proposed amendments is to respond to comments made during the biennial regulatory review; to clarify and simplify regulations; and to respond to current needs and technology in the practice.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code

of Virginia.

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

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July 2, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Pharmacy intends to amend regulations entitled: **VR 530-01-2. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.** The purpose of the proposed amendments is to respond to comments made during the biennial regulatory review, to clarify and simplify regulations, and to respond to current needs and technology in the practice.

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

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

POLYGRAPH EXAMINERS ADVISORY BOARD

June 7, 1993 - 10 a.m. – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☐

A meeting for the purpose of administering the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF PROFESSIONAL COUNSELORS

† June 18, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☐

A meeting to conduct general board business to include committee reports and respond to board correspondence. No public comment. Regulatory review will also be conducted.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

May 18, 1993 - 8:30 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☒

An informal fact finding conference to review residency verification for licensure of Jodi L. French, Psy.D.

May 18, 1993 - 10 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Room 3, Richmond, Virginia. ☒

An informal fact finding conference to review allegations regarding a complaint received by the New Hampshire Board of Examiners for the licensure request of Wayne L. Smith, Psy.D.

Contact: Evelyn B. Brown, Executive Director or Jane Ballard, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

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July 20, 1993 - 9 a.m. - Public Hearing
6606 West Broad Street, 5th Floor, Conference Room 1,
Richmond, Virginia.

August 7, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **VR 565-01-2. Regulations Governing the Practice of Psychology.** The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

REAL ESTATE APPRAISER BOARD

NOTE: CHANGE IN MEETING DATE.

May 18, 1993 - 10 a.m. - Open Meeting
Department of Commerce, 3600 West Broad Street,
Richmond, Virginia.

A general business meeting.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804)

367-0500.

REAL ESTATE BOARD

May 26, 1993 - 9 a.m. - Open Meeting
Virginia Beach Resort and Conference Center, Shore Drive,
Virginia Beach, Virginia. ☒ (Interpreter for the deaf
provided upon request)

A board planning meeting and retreat to review practices and procedures for handling of board business and activities.

May 27, 1993 - 9 a.m. - Open Meeting
Virginia Beach Resort and Conference Center, Shore Drive,
Virginia Beach Virginia. ☒ (Interpreter for the deaf
provided upon request)

A work session for review of Real Estate Board Regulations and Time-Share Regulations, if time permits.

Contact: Joan L. White, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

BOARD OF REHABILITATIVE SERVICES

May 27, 1993 - 10 a.m. - Open Meeting
Williamsburg Hilton and Conference Center, Williamsburg,
Virginia.

A regular monthly business meeting of the board.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318 or toll-free 1-800-552-5019/TDD ☒

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

May 20, 1993 - 10 a.m. - Open Meeting
1500 East Main Street, Suite 115, Main Street Station,
Richmond, Virginia. ☒

A regular meeting.

Contact: Constance G. Talbert, Secretary, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

June 2, 1993 - 10 a.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Senate
Room A, Richmond, Virginia. ☒

Calendar of Events

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA SMALL BUSINESS ADVISORY BOARD

† **May 18, 1993 - 8 a.m.** – Open Meeting
Virginia Department of Economic Development, 1021 East Cary Street, 14th Floor Board Room, Richmond, Virginia.

☐

A regular meeting.

Contact: David V. O'Donnell, Director of Small Business and Financial Services, Virginia Department of Economic Development, Office of Small Business and Financial Services, 1021 E. Cary St., 11th Floor, Richmond, VA 23219, telephone (804) 371-8260.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **May 19, 1993 - 1:30 p.m.** – Open Meeting
† **May 20, 1993 - 9 a.m.** (if necessary) – Open Meeting
Ramada Inn, 955 Pepper's Ferry Road, Wytheville, Virginia. ☐

A work session and general business meeting of the board.

Contact: Phyllis J. Sisk, Senior Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9236 or toll-free 1-800-552-3431.

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May 21, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-80-01. Human Subject Research Regulations.** The regulations are for assuring the protection of participants in human subject research conducted or authorized by the Virginia Department of Social Services, local social service agencies, agencies licensed by the department, and others receiving funds for state or local agencies.

Statutory Authority: §§ 63.1-25 and 63.1-25.01 of the Code of Virginia.

Written comments may be submitted through May 21,

1993, to Sue Murdock, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Contact: Peggy Friedenberg, Policy Analyst, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

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† **July 17, 1993** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to 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 Family Day 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 and reenacted by the 1993 General Assembly, change the definition of a family day care home to that of a family day home and require the licensure of a family day 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 licensed family day homes.

Purpose: This regulation is being proposed for repeal, effective November 1, 1993, and upon promulgation of a new regulation, Minimum Standards for Licensed Family Day Homes (VR 615-25-01:1), effective November 1, 1993. Maintaining the existing regulation would be in conflict with the statutory mandates.

Substance: The 1993 amendments to the licensing statute require the promulgation of a regulation for licensure and operation of family day homes under the new definition of a family day home. A regulation needs to be promulgated for licensed family day homes to accommodate corresponding changes in the law, effective July 1, 1993, and to update current licensing requirements.

Issues: This regulation addresses the following issues which affect family day homes subject to licensure by the Department of Social Services: personnel, household, physical environment and equipment, care of children, physical health, and reporting and recordkeeping requirements.

Impact: The repeal of the existing regulation will have little or no effect on family day providers and children in their care. As of March 1993 there were 534 family day care homes licensed by the Department of Social Services.

They have a licensure capacity for 4,532 children.

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

Written comments may be submitted until July 17, 1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

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† May 27, 1993 - 5 p.m. - Public Hearing
Roanoke City Chambers, 215 Church Avenue, S.W., 4th Floor Municipal Building, Roanoke, Virginia.

† June 1, 1993 - 5 p.m. - Public Hearing
Fairfax Government Center, 12000 Government Center Parkway, Fairfax, Virginia.

† June 2, 1993 - 5 p.m. - Public Hearing
Norfolk City Council Chambers, 810 Union Street, 11th Floor, Norfolk City Hall Building, Norfolk, Virginia.

† June 3, 1993 - 5 p.m. - Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

July 17, 1993 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-25-01:1. Minimum Standards for Licensed Family Day Homes.** The proposed regulation shows major changes in the licensing standards caused by amendments to the Code of Virginia related to a family day home and are necessary to update licensing requirements.

STATEMENT

Basis: Section 63.1-196 of the Code of Virginia, as amended by the 1993 General Assembly, requires the licensure of a family day home. Section 63.1-202 provides the statutory basis for the State Board of Social Services to prescribe general standards for family day homes.

Purpose: The purpose of the minimum standards for licensed family day 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 1993 General Assembly and deemed necessary to update licensure requirements which have not been significantly revised since 1979. The provisions of this regulation are expected to become effective on November

1, 1993.

Substance: The licensing statute as it relates to a family day home was revised to:

1. Change the name of a family day care or group family day care home to a family day home;
2. Increase the maximum number of children who may receive care at any one time from 9 to 12;
3. Include related children, other than the provider's own children and children who reside in the home, and before and after school children in determining subjectivity to licensure;
4. Phase in licensure of newly subject homes between July 1, 1993, and July 1, 1996;
5. Exclude homes where the children in care are all grandchildren of the provider; and
6. Limit the number of young children in care to four children under the age of two. This includes the provider's own children and any children that reside in the home.

The proposed regulation includes revisions in the following areas:

Provider requirements - Child Protective Services Central Registry checks on all members of the household and all employees, training in first aid plus an additional six hours training annually in an area related to child care, the ability to speak and write in English to meet the requirements of the regulations;

Physical requirements - prohibition of smoking in areas where children are in care, individual space available to children two years of age and older, adequate space indoors and outdoors, safe storage of a variety of hazardous materials and objects, specified temperature ranges for indoor care, protective barriers to stairways for young children, 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, protections to prevent fires and handle emergencies;

Program and service requirements for children - sufficient supply and variety of age appropriate play equipment or material; children not left in care of someone who is a minor; equipment safeguards for children swimming, sleeping, or eating; new staffing ratios; requirements for transporting children; sanitary procedures for toileting and diapering; guidelines for supervision; and positive discipline;

Meal and nutrition requirements - limits the use of pasteurized milk and powered milk for cooking purposes only, encourages caution in the use of

Calendar of Events

microwaves in heating baby bottles and feeding certain foods to young children, specifies refrigerator and freezer temperatures, provides for supplementing meals that children bring from home to ensure nutritional needs are met, prohibits pets in food preparation areas, requires pet waste to be removed from areas where children are in care, and requires that children be kept separated from dangerous pets; and

Record keeping requirements - a record for each child with provisions for confidentiality, medication log and documentation of injuries or accidents, provider-parent agreements including permitting parents to visit the home whenever children are in care.

Issues: This regulation addresses the following issues which affect family day homes subject to licensure by the Department of Social Services: providers, household, physical environment and equipment, care of children, physical health, and record keeping.

Impact: This regulation will affect family day homes licensed by the Department of Social Services. As of March, 1993, there were 534 family day homes licensed by the Department of Social Services, which have a total licensed capacity of 4,532 children.

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

Written comments may be submitted until July 17, 1993, to Alfreda Redd, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, 7th Floor, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF SOCIAL WORK

May 21, 1993, - 10 a.m. - Open Meeting
6606 West Broad Street, Richmond, Virginia. ☒

A meeting to (i) conduct general board business; (ii) respond to correspondence; and (iii) discuss current regulations of regulatory review changes. No public comment will be received.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9914.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **June 9, 1993 - 10 a.m. - Open Meeting**
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

DEPARTMENT OF TRANSPORTATION

June 10, 1993 - 9 a.m. - Public Hearing
Salem District Office, Harrison Avenue, Salem, Virginia. ☒
(Interpreter for the deaf provided upon request)

Final allocation hearing for the western districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Bristol, Salem, Lynchburg, and Staunton districts.

June 10, 1993 - 2 p.m. - Public Hearing
Virginia Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the eastern districts to receive comments on highway allocations for the upcoming year, and on updating the six-year improvement program for the interstate, primary, and urban systems, and mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper, and Northern Virginia districts.

Contact: Albert W. Coates, Jr., Assistant Commissioner, Virginia Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-9950.

TRANSPORTATION SAFETY BOARD

May 21, 1993 - 1:30 p.m. - Open Meeting
Radisson Hotel, Hampton, Virginia. ☒

A quarterly meeting.

Contact: Bill Dennis, Executive Assistant, 2300 W. Broad St., Richmond, VA 23220, telephone (804) 367-2666.

GOVERNOR'S COMMISSION ON VIOLENT CRIME

June 22, 1993 - 9:30 a.m. - Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia. ☒

A full commission meeting.

Contact: Kris Ragan, Special Assistant, 701 E. Franklin St., 9th Floor, Richmond, VA 23219, telephone (804) 225-3899.

VIRGINIA RESOURCES AUTHORITY

June 8, 1993 - 9:30 a.m. - Open Meeting
The Mutual Building, 909 East Main Street, Suite 607,
Board Room, Richmond, Virginia.

The board will meet to (i) approve minutes of the prior month's 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: Shockley D. Gardner, Jr., Virginia Resources Authority, Mutual Building, 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

VIRGINIA WAR MEMORIAL FOUNDATION

May 26, 1993 - Noon - Open Meeting
621 South Belvidere Street, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A regular meeting of the Board of Trustees.

Contact: Peggy R. Robertson, Assistant Director for Administration, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

VIRGINIA WASTE MANAGEMENT BOARD

May 20, 1993 - 2 p.m. - Public Hearing
Madison Building, 109 Governor Street, Main Conference Room, Richmond, Virginia.

June 18, 1993 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to amend regulations entitled: **VR 672-10-1. Hazardous Waste Management Regulations.** Amendment 13 to the Hazardous Waste Management Regulations incorporates changes applicable to wood preservers.

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

Contact: William F. Gilley, Regulation Consultant, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

† **June 17, 1993 - 10 a.m. - Open Meeting**
Department of Environmental Quality, 4900 Cox Road,

Board Room, Glen Allen, Virginia. ☒

The Waste Division of the Department of Environmental Quality will receive public comments on its Notice of Intended Regulatory Action proposing to amend the Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1). The purpose is to amend existing regulations to incorporate requirements contained in EPA Guidelines for Municipal Solid Waste Facilities and EPA Financial Assurance Guidelines for local governments. Public comments will be received on the proposed amendment along with recommendations. Public comments will also be received on the costs and benefits of the regulations, amendments, and any proposed alternatives to be recommended by the public.

Contact: William F. Gilley, Regulatory Services Manager, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **May 17, 1993 - 10:30 a.m. - Open Meeting**
Virginia Commonwealth University, Student Commons, 907 Floyd Avenue, Richmond, Virginia. ☒

A general board meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

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June 4, 1993 - Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waste Management Facility Operators intends to adopt regulations entitled: **VR 674-01-01. Public Participation Guidelines.** The purpose of the proposed regulation is to establish procedures to solicit comment from all interested parties, establish a mailing list and establish procedures for public hearings, notice of intended regulatory action and advisory committees.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

May 19, 1993 - 7 p.m. - CANCELLED
Fairfax County Government Center, 1200 Government

Calendar of Events

Center Parkway, Conference Center, Rooms 4 and 5, Fairfax, Virginia.

The meeting to receive comments from interested persons on the intent to amend the Potomac Embayment Standards of VR 680-21-00, Water Quality Standards, and on the costs and benefits of the intended action has been cancelled.

Contact: Alan E. Pollock, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

May 20, 1993 - 7 p.m. - Open Meeting
Rockingham County Administration Office, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the North River Surface Water Management Area and the cost and benefits of the stated action (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

May 24, 1993 - 7 p.m. - Open Meeting
Department of Environmental Quality, 4900 Cox Road, Board Room, Glen Allen, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the James River Surface Water Management Area, the Richmond Metropolitan Area, and the cost and benefits of the stated action (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

† May 26, 1993 - 2 p.m. - Public Hearing
Augusta County Government Center, 4801 Lee Highway, Public Meeting Room, Verona, Virginia. ☒ (Interpreter for the deaf provided upon request)

The State Water Control Board will hold a public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0022349 for Augusta County Service Authority's Weyers Cave Sewage Treatment Plant (STP), P.O. Box 859, Verona, Virginia 24482. The purpose of this hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the proposed discharge on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, Hearings Reporter, Department of Environmental Quality, 4900 Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5162 or (804) 527-4261/TDD ☎ .

† May 26, 1993 - 2 p.m. - Public Hearing
Augusta County Government Center, 4801 Lee Highway, Public Meeting Room, Verona, Virginia. ☒ (Interpreter for the deaf provided upon request)

The State Water Control Board will hold a public hearing to receive comments on the proposed Virginia Pollutant Discharge Elimination System (VPDES) Permit No. VA0062481 for Augusta County Service Authority's New Hope Sewage Treatment Plant (STP), P.O. Box 859, Verona, Virginia 24482. The purpose of this hearing is to receive comments on the proposed issuance or denial of the permit and the effect of the proposed discharge on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, Hearings Reporter, Department of Environmental Quality, 4900 Cox Rd., Glen Allen, VA 23060, telephone (804) 527-5162 or (804) 527-4261/TDD ☎ .

May 26, 1993 - 7 p.m. - Open Meeting
102 North Church Street, Clarke County Board of Supervisors Room, Berryville, Virginia.

A meeting to receive oral comments from interested persons on the adoption of the Shenandoah River Surface Water Management and the cost and benefits of the adoption (see Notices of Intended Regulatory Action).

Contact: Thomas Felvey, Office of Water Resources Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5092.

June 3, 1993 - 7 p.m. - Open Meeting
Rockingham County Administrative Center, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

June 17, 1993 - 7 p.m. - Open Meeting
Norfolk City Council Chamber, 810 Union Street, City Hall, Norfolk, Virginia.

June 24, 1993 - 7 p.m. - Open Meeting
Roanoke County Administrative Center, 3738 Brambleton Avenue, S.W. Community Room, Roanoke, Virginia.

A meeting to receive views and comments and to answer questions of the public regarding the State Water Control Board's intent to promulgate a general permit for animal feeding operations (VR 680-14-22, Virginia Pollution Abatement General Permit for Animal Feeding Operations).

Contact: Cathy Boatwright, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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† June 15, 1993 - 2 p.m. - Public Hearing
Department of Environmental Quality, Innsbrook Corporate

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Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† June 21, 1993 - 3 p.m. - Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building,
810 Union Street, Norfolk, Virginia.

† June 22, 1993 - 3 p.m. - Public Hearing
University of Virginia Southwest Center, Highway 19 North,
Classroom 1 and 2, Abingdon, Virginia.

† June 23, 1993 - 1:30 p.m. - Public Hearing
Roanoke County Administration Center, 3738 Brambleton
Avenue, S.W., Community Room, Roanoke, Virginia.

† June 23, 1993 - 7:30 p.m. - Public Hearing
Harrisonburg City Council Chambers, Municipal Building,
345 South Main Street, Harrisonburg, Virginia.

† June 30, 1993 - 2 p.m. - Public Hearing
McCourt Building, 4850 Davis Ford Road, One County
Complex, Prince William County Board Room, Prince
William, Virginia.

July 19, 1993 - Written comments may be submitted until
4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1
of the Code of Virginia that the State Water Control
Board intends to repeal regulations entitled: VR
680-14-01. Permit Regulation. The purpose of the
proposed action is to repeal the Permit Regulation
while concurrently considering the adoption of a new
VPDES Permit Regulation and VPA Permit Regulation.

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
question and answer period will begin 1/2 hour before
the scheduled public hearing. Accessibility to persons
with disabilities: The hearings are being held at public
facilities believed to be accessible to persons with
disabilities. Any person with questions on the
accessibility of the facilities should contact Mrs.
Dalton at the address below or by telephone at (804)
527-5162 or TDD (804) 527-4261. Persons needing
interpreter services for the deaf must notify Ms.
Dalton no later than Tuesday, June 1, 1993. Request
for comments: The board seeks comments on the
proposal, the issues and the costs and benefits of the
proposal. Applicable federal requirements: The repeal
of this regulation is not subject to federal
requirements. Any federal requirements associated
with the permit programs regulated under this
regulation will be met by the adoption of the VPDES
Permit Regulation (VR 680-14-01:1). Other information:
In addition, the agency has performed certain analyses
on the proposal related to purpose, need, impacts and
alternatives which are available to the public upon
request.

STATEMENT

Subject: The subject of the proposed rulemaking is the
repeal of the Permit Regulation (VR 680-14-01).

Substance: The State Water Control Board (SWCB) intends
to repeal the Permit Regulation (VR 680-14-01). This
regulation delineates the authority and general procedures
to be followed in connection with issuing VPDES and VPA
permits. This action is being proposed in order to
eliminate any confusion and duplication of regulations
which may result from the concurrent adoption of a
VPDES Permit Regulation (VR 680-14-01:1) and a VPA
Permit Regulation (VR 680-14-21). These regulations will
incorporate the intent and purpose of the Permit
Regulation.

Impact: The repeal of VR 680-14-01 would have no impact
on the regulated community nor the environment as the
purpose and scope of the regulation are being transferred
into the VPDES Permit Regulation and the VPA Permit
Regulation.

Issues: Public participation to date has raised no issues
specific to this proposed action.

Basis: The basis for this regulation is § 62.1-44.2 et seq. of
the Code of Virginia. Specifically, Section 62.1-44.15(10)
authorizes the State Water Control Board to adopt such
regulations as it deems necessary to enforce the general
water quality management program.

Purpose: The repeal of this regulation is necessary in
order to eliminate duplication and possible contradictions
which may arise following the adoption of the VPDES
Permit Regulation (VR 680-14-01:1) and the VPA Permit
Regulation (VR 680-14-21).

Statutory Authority: § 62.1-44.15(10) of the Code of
Virginia.

Written comments may be submitted until 4 p.m. on July
19, 1993, to Doneva Dalton, Hearing Reporter, Department
of Environmental Quality, P.O. Box 11143, Richmond,
Virginia 23230.

Contact: Richard Ayers, Department of Environmental
Quality, P.O. Box 11143, Richmond, VA 23230, telephone
(804) 527-5059.

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† June 15, 1993 - 2 p.m. - Public Hearing
Department of Environmental Quality, Innsbrook Corporate
Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† June 21, 1993 - 3 p.m. - Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building,
810 Union Street, Norfolk, Virginia.

† June 22, 1993 - 3 p.m. - Public Hearing
University of Virginia Southwest Center, Highway 19 North,
Classroom 1 and 2, Abingdon, Virginia.

Calendar of Events

† June 23, 1993 - 1:30 p.m. — Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† June 23, 1993 - 7:30 p.m. — Public Hearing
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

† June 30, 1993 - 2 p.m. — Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 — Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-01:1. VPDES Permit Program Regulation.** The purpose of the proposed regulation is to consider adoption of a new regulation to govern point source discharges of pollutants to surface water. These discharges are currently regulated under VR 680-14-01 which will be repealed.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The proposed regulation contains language prohibiting discharges without a permit and requiring that anyone who does discharge without a permit must notify the SWCB immediately. This proposed regulation also would prohibit the permitting of any discharge when discharge to publicly owned treatment works is reasonably available, unless the owner of the treatment works refuses in writing to accept the wastewater. This is being proposed in order to reduce a proliferation of point source discharges in areas served by central sewers.

Under the section dealing with confidentiality of information, the SWCB has added a reference to the Virginia Toxics Substance Information Act (TSIA) which states that any information obtained through the filings under the TSIA will be subject to the confidentiality requirements of that Act. The alternative of allowing such information to become

public information would potentially violate the provisions of the TSIA.

The proposed regulation contains requirements from state law that no application for a permit can be considered complete until the local governing body has certified that the activity applying for a permit is in compliance with all applicable zoning and planning ordinances. The application for a privately owned treatment works must also have a certification that the plant is incorporated with and in compliance with all relevant regulations or orders of the State Corporation Commission.

Unusual or extraordinary discharges from permitted facilities are to be reported within 24 hours. This is in addition to the federal requirement for reporting noncompliance with permit conditions. It is possible that a spill or another event could occur which would adversely affect state waters, but would not technically be considered noncompliance with the permit. This provision makes the permittee responsible for reporting such incidents to the SWCB. If the requirement is not included, certain spills may go unreported and no permit violation would occur.

The SWCB has included language from the current permit regulation which deals with publicly owned treatment works. It specifically addresses action plans which must be submitted when the plant reaches 95% of its design capacity for three consecutive months. This requirement allows the SWCB and the permittee to work out a plan to deal with the amount of sewage being treated at the plant so that the plant does not get into a situation where it is handling more sewage than it can adequately treat.

Another provision requires that the owner hire an operator for the treatment plant who is licensed as required by the regulations of the Board for Wastewater Works and Waterworks Operators. This will help to ensure that the plant is operated properly by someone with the appropriate amount of experience and training.

The proposed regulation stipulates that when the SWCB decides to deny a permit application, the owner must be notified of the steps to take to obtain approval of the application. This language is from the State Water Control Law and helps to assure that the owner has due process of his request for a permit.

The requirement that the applicant pay the cost of the public notice of a draft permit is included as an addition to the federal language.

The SWCB's Procedural Rule No. 1 is given as the source of procedures for requesting public hearings and for decisions from public hearings. The federal language applies to permit actions only when there are no corresponding state procedures.

The causes for termination of a permit are those listed in the State Water Control Law, instead of the causes listed in the federal regulations. Where the two lists of causes do not overlap substantially, the federal cause is also listed.

The proposed regulation includes language from the existing permit regulation dealing with state enforcement capabilities, delegation of authority to the Department of Mines, Minerals and Energy for permits issued to industrial activity associated with coal mines, the actions and duties of SWCB members and the director, and the processing of applications after the effective date of the regulation. These sections are from the existing Permit Regulation, do not have counterparts in federal NPDES regulations and are considered necessary for the VPDES permit regulation. Deleting them may cause some problems with the SWCB's ability to implement the permit program in Virginia. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the administration of the National Pollutant Discharge Elimination System (NPDES) permit program by the Virginia State Water Control Board (SWCB) as the Virginia Pollutant Discharge Elimination System (VPDES). The proposed VPDES Permit Regulation will delineate the procedures and requirements to be followed in connection with VPDES permits issued by the SWCB pursuant to the Clean Water Act and the State Water Control Law.

Substance: This proposed regulation will: (1) include definitions specific to the VPDES permitting process; (2) delineate when permits are required, when permits are prohibited, and list activities which are excluded from the need for a permit; (3) establish the information requirements for applying for a VPDES permit; (4) acknowledge the SWCB's authority to issue permits to special program areas such as storm water, concentrated animal feeding operations, concentrated aquatic animal production facilities, aquaculture projects, silviculture activities, and general permits; (5) list conditions which are applicable to all permits and those applicable to specified categories of permits; (6) describe the process by which the SWCB shall establish limits and conditions in permits; (7) include provisions for public involvement in the permit issuance process; (8) establish causes for the transfer, modification, revocation and reissuance, and termination of permits; (9) establish standards for the use or disposal of sewage sludge; (10) include pretreatment regulations for existing and new sources which discharge to publicly owned treatment works; (11) identify the SWCB's intention to enforce permits; and (12) delegate the authority to administer the VPDES permit program for coal mine discharges to the Department of Mines,

Minerals and Energy.

Impact: This regulation will impact all of the approximately 3,200 Virginia Pollutant Discharge Elimination System permittees in that the governing regulation will be replaced with an updated version. There may be added costs to the permittees beyond those required under the existing regulation because the proposed regulation will include programs such as storm water and sludge management which are not part of the existing regulation, but are part of federal regulations applicable to those dischargers. The SWCB estimates that there will be up to 900 sludge generators affected by the new requirements. The average total annual cost for compliance is estimated at \$3,810 for each affected sewage treatment plant. This will vary according to the size of the plant and the amount and quality of the sludge generated. The total includes costs for sludge management, monitoring, record keeping, and reporting. The average cost per household served by the sewage treatment plants is estimated at \$1. The storm water permitting will involve an estimated 11 municipal sources and up to 15,000 industrial sites in the construction, heavy industrial, light industrial and miscellaneous categories. The municipalities will have to adopt ordinances in order to enforce the local storm water management program. The cost for making a municipal storm water VPDES permit application is estimated to range between \$76,000 and \$2 million. They will then incur costs for establishing their storm water program, including capitol investments, which can range up to \$9 million annually for large systems. An additional \$130,000 per year may be spent for monitoring. Industrial sites will incur expenses for development of Best Management Practices which range between \$1,600 and \$120,000 per site, depending on the size of the project. Annual costs associated with the operation and maintenance of these storm water controls is estimated to range from \$500 to \$18,000. The majority of the industrial sites will be covered by general permits being proposed as separate regulations. The cost for applying for coverage under the general storm water permits is estimated at \$20. Individual permit applications cost an estimated \$1,000. No general permits have been developed to date for the municipal separate storm sewers. A separate regulation that is currently being promulgated will require a fee from all applicants for VPDES permits, ranging from \$8,000 for major industrial permits to \$200 for facilities covered under general permits.

Issues: There are very few issues open for consideration in this proposed rulemaking. The VPDES permit program is administered by the State Water Control Board under the federal Clean Water Act and the State Water Control Law. In order to satisfy the requirements of the EPA, the SWCB has opted to use the federal regulations adopted pursuant to the Clean Water Act as the basis for the proposed regulation. If this decision is upheld, only those issues related to parts of the proposal not taken directly from federal regulations are open for consideration.

Public participation to date has raised the issue of

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implementation of the SWCB's toxics management program through the general language of the federal regulation. Most of those who commented want the SWCB to continue to use its Toxics Management Regulation (VR 680-14-03) as the basis for decisions related to controlling toxicity in VPDES permits. The language of the Toxics Regulation could become guidance to agency permit writers. The SWCB is proposing to repeal the Toxics Management Regulation through a separate rulemaking.

The change from the current VPA permits for sludge handlers to the SWCB's intention to permit sludge generators under VPDES permits concerned some of those who commented.

The issue of implementing the new provisions of the proposed regulation in existing permits was raised during the public comment period. The staff indicated that any changes required by the new regulation would be implemented only when existing permits are reissued or modified for other causes.

The SWCB will consider a provision for schedules in permits which allows for compliance with water quality-based permit limits at some time after the permit is issued.

Basis: The basis for this proposed regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the SWCB to adopt rules governing the procedures of the SWCB with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the SWCB to regulate discharges of sewage, industrial wastes and other wastes.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. VR 680-14-01:1 will be the specific regulation governing this authorization.

Purpose: This proposed regulation is designed to administer the Virginia Pollutant Discharge Elimination System permit program to control the point source discharge of pollutants to surface waters of the state.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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† **June 15, 1993 - 2 p.m.** – Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **June 21, 1993 - 3 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **June 22, 1993 - 3 p.m.** – Public Hearing
University of Virginia Southwest Center, Highway 19 North, Classroom 1 and 2, Abingdon, Virginia.

† **June 23, 1993 - 1:30 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **June 23, 1993 - 7:30 p.m.** – Public Hearing
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

† **June 30, 1993 - 2 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to repeal regulations entitled: **VR 680-14-03. Toxics Management Regulation.** The purpose of the proposed action is to consider repealing the Toxics Management Regulation in order to eliminate any confusion which may result from the concurrent adoption of the new VPDES Permit Regulation.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The repeal of this regulation is not subject to federal

requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed rulemaking is the repeal of the Toxics Management Regulation (VR 680-14-03).

Substance: The State Water Control Board (SWCB) intends to repeal the Toxics Management Regulation (VR 680-14-03). This regulation delineates the authority and general procedures to be followed in connection with identifying and eliminating surface water discharges of toxics materials. This action is being proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a VPDES Permit Regulation (VR 680-14-01:1). The VPDES Permit Regulation will include language from the federal NPDES regulations on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations. The testing requirements and decision criteria of the Toxics Management Regulation will be used as staff guidance in the implementation of the toxics control provisions of the VPDES Permit Regulation. The SWCB's position on the control of toxic pollutants will not be substantially altered as a result of this proposed action.

Impact: This regulation will impact all of the approximately 500 holders of VPDES permits who are currently subject to the requirements of the Toxics Management Regulation. However, there should not be a significant difference in the regulation of these discharges or the costs incurred by permittees because under the new VPDES Permit Regulation (VR 680-14-01:1), they will still be required to monitor their discharges for and control any toxic pollutants in toxic concentrations.

Issues: Public participation to date has raised the issue of implementation of the SWCB's toxics management program through the language of the federal regulations proposed for adoption in the VPDES Permit Regulation. The federal regulations give general statements about the method the permitting authority is to use in determining whether or not a discharge is toxic. Most of those who commented want the SWCB to continue to use the very specific language of its Toxics Management Regulation (VR 680-14-03) as the basis for decisions related to controlling toxicity in VPDES permits. The SWCB proposes to do this by revising the language of the Toxics Regulation and distributing it to agency permit writers in the form of a guidance document. That guidance would be used to implement the general methods given in the new regulation.

There was some concern that EPA may not allow the SWCB to continue to use the Toxics Regulation as

implementation guidance because it does not coincide exactly with EPA's own guidance on this subject. However, until EPA adopts their guidance as regulation, the SWCB is free to use its own judgment as to the applicability of EPA guidance to the VPDES permit program.

There was some support for the use of permitting procedures for toxics that account for effluent and analytical variability. A request was made for the SWCB to consider developing tiered permits for whole effluent toxicity and toxic chemicals. This would in effect allow a more toxic effluent to be discharged when dilution in the stream was high and require less toxicity during periods of low dilution. The public also asked the SWCB to keep the language from the Toxics Management Regulation dealing with the concept of the use of instream impact studies in situations where there is a question concerning the reliability of the monitoring methods used to predict effluent toxicity.

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program and § 62.1-44.21 authorizes the SWCB to require any owner to furnish information necessary to determine the effect of the discharge on the quality of state waters.

Purpose: The repeal of this regulation is necessary in order to eliminate duplication and possible contradictions which may arise following the adoption of the VPDES Permit Regulation (VR 680-14-01:1).

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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† **June 21, 1993 - 11 a.m.** – Public Hearing
James City County Board of Supervisors Room, 101C
Mounts Bay Road, Building C, Williamsburg, Virginia.

† **June 23, 1993 - 10:30 a.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton
Avenue, S.W., Community Room, Roanoke, Virginia.

† **June 30, 1993 - 10:30 a.m.** – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt
Building, Prince William County Board of Supervisors
Room, Prince William, Virginia.

Calendar of Events

† July 19, 1993 - Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-16. General Permit for Storm Water Discharges Associated with Heavy Manufacturing Facilities.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges associated with heavy manufacturing facilities.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The proposed regulation requires that a site map be developed that identifies the location of certain activities including fueling operations and treatment, storage and disposal of wastes. The federal general permit requires the identification of these activities where they are exposed to precipitation. The SWCB believes the identification of the location of these areas is necessary to determine the extent of industrial activity occurring at the site regardless of their potential for exposure to precipitation. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable

federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the authorization by a Virginia Pollutant Discharge Elimination System (VPDES) general permit of storm water discharges associated with industrial activity from heavy manufacturing facilities. The Clean Water Act requires point source storm water discharges to be covered by a National Pollutant Discharge Elimination System (NPDES) permit. Federal regulations require certain facilities with storm water discharges associated with industrial activity to submit a permit application. This proposed regulation will allow for the submittal of a Registration Statement as application for coverage under a VPDES general permit and authorize the issuance of a VPDES general permit for storm water discharges associated with industrial activity from heavy manufacturing facilities. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity.

Substance: This proposed regulation will: (1) define facilities classified as heavy manufacturing which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

Impact: The federal storm water regulations require permit applications from all facilities covered by the regulation that discharge storm water discharges associated with industrial activity. In Virginia there are an estimated 1,250 facilities classified as heavy manufacturing that may be required to submit a permit application under this program. As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. Specific types of facilities may have more detailed monitoring requirements. Separate permit fee regulations that are currently being promulgated will require a permit fee from the applicant for the issuance of a general permit.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants in storm water discharges associated with industrial activity is necessary. An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the board if the general permit regulation is not adopted. The only

other option would be for facilities to submit individual applications and for the board to develop and issue individual permits for each facility at much higher costs. The agency would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Basis: The authority for this regulation is pursuant to the §§ 62.1-44.15 (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from heavy manufacturing facilities in the most effective, flexible, and economically practical manner to assure the improvement of water quality in state waters.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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† **June 21, 1993 - 11 a.m.** – Public Hearing
James City County Board of Supervisors Room, 101C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **June 23, 1993 - 10:30 a.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **June 30, 1993 - 10:30 a.m.** – Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-17. General Permit for Storm Water Discharges From Light Manufacturing Facilities.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from light manufacturing facilities.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the authorization by a Virginia Pollutant Discharge Elimination System (VPDES) general permit of storm water discharges associated with industrial activity from light manufacturing facilities. The Clean Water Act requires point source storm water discharges to be covered by a National Pollutant Discharge Elimination System (NPDES) permit. Federal regulations require certain facilities with storm water discharges associated with industrial activity to submit a permit application. This proposed regulation will allow for the submittal of a Registration Statement as application for coverage under a VPDES general permit and authorize the issuance of a VPDES general permit for storm water discharges associated with industrial activity from light

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manufacturing facilities. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

Substance: This proposed regulation will: (1) define facilities classified as light manufacturing which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

Impact: The federal storm water regulations require permit applications from all facilities covered by the regulation that discharge storm water discharges associated with industrial activity. In Virginia there are an estimated 3650 facilities classified as light manufacturing that may be required to submit a permit application under this program. As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. Specific types of facilities may have more detailed monitoring requirements. Separate permit fee regulations that are currently being promulgated will require a permit fee from the applicant for the issuance of a general permit.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants in storm water discharges associated with industrial activity is necessary. An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the board if the general permit regulation is not adopted. The only other option would be for facilities to submit individual applications and for the board to develop and issue individual permits for each facility at much higher costs. The agency would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Basis: The authority for this regulation is pursuant to §§ 62.1-44.15 (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities in the most effective, flexible, and economically practical manner to

assure the improvement of water quality in state waters.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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† June 21, 1993 - 11 a.m. - Public Hearing
James City County Board of Supervisors Room, 101C
Mounts Bay Road, Building C, Williamsburg, Virginia.

† June 23, 1993 - 10:30 a.m. - Public Hearing
Roanoke County Administration Center, 3738 Brambleton
Avenue, S.W., Community Room, Roanoke, Virginia.

† June 30, 1993 - 10:30 a.m. - Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt
Building, Prince William County Board of Supervisors
Room, Prince William, Virginia.

July 19, 1993 - Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-18. General Permit for Storm Water Discharges From Transportation Facilities; Landfills, Land Application Sites and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from certain covered activities.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for

developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the authorization by a Virginia Pollutant Discharge Elimination System (VPDES) general permit of storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities and steam electric power generating facilities. The Clean Water Act requires point source storm water discharges to be covered by a National Pollutant Discharge Elimination System (NPDES) permit. Federal regulations require certain facilities with storm water discharges associated with industrial activity to submit a permit application. This proposed regulation will allow for the submittal of a Registration Statement as application for coverage under a VPDES general permit and will authorize the issuance of a VPDES general permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

Substance: This proposed regulation will: (1) define facilities classified as transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3)

establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

Impact: The federal storm water regulations require permit applications from all facilities covered by the regulation that discharge storm water discharges associated with industrial activity. In Virginia there are an estimated 1,500 facilities that may be required to submit a permit application under this program. As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. Specific types of facilities may have more detailed monitoring requirements. Separate permit fee regulations that are currently being promulgated will require a permit fee from the applicant for the issuance of a general permit. One state agency will be significantly impacted if this proposed regulation is not adopted. Other state agencies may be impacted but to a lesser degree.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants in storm water discharges associated with industrial activity is necessary. An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the board if the general permit regulation is not adopted. The only other option would be for facilities to submit individual applications and for the board to develop and issue individual permits for each facility at much higher costs. The agency would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Basis: The authority for this regulation is pursuant to §§ 62.1-44.15(6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities in the most effective, flexible, and economically practical manner to assure the improvement of water quality in state waters.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July

Calendar of Events

19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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† June 21, 1993 - 11 a.m. - Public Hearing
James City County Board of Supervisors Room, 101C Mounts Bay Road, Building C, Williamsburg, Virginia.

† June 23, 1993 - 10:30 a.m. - Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† June 30, 1993 - 10:30 a.m. - Public Hearing
One County Complex, 4850 Davis Ford Road, McCourt Building, Prince William County Board of Supervisors Room, Prince William, Virginia.

July 19, 1993 - Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-19. General Permit for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to adopt a general permit for storm water discharges from construction sites.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Mrs. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The federal general permit for storm water discharges from construction sites was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application 2 days prior to the commencement of the construction. This proposed regulation requires the Registration Statement to be submitted at least 14 days prior to the commencement of construction. This was necessary to allow the SWCB staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to

discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge 2 days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to issue the general permit in order to assure consistency and compliance with the storm water regulations. The SWCB believes the remaining provisions of the proposal to be consistent with and no more stringent than applicable federal requirements. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the authorization by a Virginia Pollutant Discharge Elimination System (VPDES) general permit of storm water discharges from construction sites. The Clean Water Act requires point source storm water discharges to be covered by a National Pollutant Discharge Elimination System (NPDES) permit. Federal regulations require certain construction sites with storm water discharges to submit a permit application. This proposed regulation will allow for the submittal of a Registration Statement as application for coverage under a VPDES general permit and authorize the issuance of a VPDES general permit for storm water discharges from construction sites. This proposed regulation will replace emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which was adopted on September 22, 1992.

Substance: This proposed regulation will: (1) define storm water discharges from construction sites which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges from construction sites through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

Impact: The federal storm water regulations require permit applications from all construction sites covered by the regulation that discharge storm water. The agency estimates there are between 5,000 and 10,000 construction sites in Virginia that may be required to submit a permit application under this program. As required by this regulation, all covered construction sites would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. Separate permit fee regulations that are currently being promulgated will require a permit fee from the applicant for the issuance of a general

permit. One state agency will be significantly impacted if this proposed regulation is not adopted. Other state agencies may be impacted but to a lesser degree.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants in storm water discharges is necessary. An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the board if the general permit regulation is not adopted. The only other option would be for construction sites to submit individual applications and for the board to develop and issue individual permits for each construction site at much higher costs. The agency would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all construction sites to easily and efficiently meet the requirements.

Basis: The authority for this regulation is pursuant to §§ 62.1-44.15 (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges from construction sites in the most effective, flexible, and economically practical manner to assure the improvement of water quality in state waters.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cathy Boatwright, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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† **June 15, 1993 - 10 a.m.** - Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

July 19, 1993 - Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.** The purpose of the proposed

regulation is to adopt a general permit for industrial discharges from nonmetallic mineral mining facilities.

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 question and answer period will begin 1/2 hour before the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: The proposed general permit for nonmetallic mineral mining operations contains effluent limits not included in applicable federal technology based limits. However, the general permit effluent limits are no more stringent than individual VPDES permits issued for this category of discharge. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed rulemaking is the adoption of a General VPDES Permit Regulation for Nonmetallic Mineral Mining Operations (VR 680-14-20). The purpose of this proposed regulatory action is to adopt a general VPDES permit for the industrial discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, other than fuels.

Substance: The proposed regulation delineates the authority and general procedures to be followed in connection with issuing general VPDES permits to operations in the nonmetallic mineral mining industrial category. General permits may be issued for categories of dischargers that involve the same or similar types of operations, discharge the same or similar types of wastes, require the same effluent limitations or operating conditions, and require the same or similar monitoring. The proposed general permit regulation will establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. They also specify the information required to apply for coverage under the general permit. The general permit contains standard language required for all VPDES permits relative to monitoring and reporting of discharge quality and the management of the facility being permitted. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. No

Calendar of Events

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. In addition, prior to obtaining coverage under the general permit the owner must have a mining permit issued by the Virginia Division of Mineral Mining, or by an associated waived program administered by a locality or other state agency.

Impact: There are approximately 90 establishments currently permitted under the individual VPDES permit program which may qualify for this proposed general permit. Adoption of this regulation will allow for the streamlining of the permit process for the covered discharges. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. The limitations and conditions in the general permit will be similar to those in individual permits currently issued to these operations. The fees for coverage under the proposed general permit would be not more than \$200, while the fee for an individual permit for these facilities could be as much as \$3,500. Adoption of the proposed regulation would also reduce the staff resources needed by the SWCB for permitting these discharges.

Issues: Public participation to date has raised no issues specific to this proposed action. Members of the regulated community assisted in the drafting of the proposed regulation.

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the SWCB to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the SWCB to adopt rules governing the procedures of the SWCB with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.20 provides that agents of the SWCB may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose: The purpose of this proposed regulatory action is

to adopt a general VPDES permit for the discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, other than fuels.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143 Richmond, VA 23230, telephone (804) 527-5059.

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† **June 15, 1993 - 2 p.m.** – Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **June 21, 1993 - 3 p.m.** – Public Hearing
Norfolk City Council Chambers, 1006 City Hall Building, 810 Union Street, Norfolk, Virginia.

† **June 22, 1993 - 3 p.m.** – Public Hearing
University of Virginia Southwest Center, Highway 19 North, Classroom 1 and 2, Abingdon, Virginia.

† **June 23, 1993 - 1:30 p.m.** – Public Hearing
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

† **June 23, 1993 - 7:30 p.m.** – Public Hearing
Harrisonburg City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

† **June 30, 1993 - 2 p.m.** – Public Hearing
McCourt Building, 4850 Davis Ford Road, One County Complex, Prince William County Board Room, Prince William, Virginia.

July 19, 1993 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-21. Virginia Pollution Abatement (VPA) Permit Program Regulation.** The purpose of the proposed action is to consider adopting a new regulation to govern sources of pollutants that are not point source discharges to surface waters. These sources are currently regulated through the Permit Regulation (VR 680-14-01).

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 question and answer period will begin 1/2 hour before

the scheduled public hearing. Accessibility to persons with disabilities: The hearings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mrs. Dalton at the address below or by telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, June 1, 1993. Request for comments: The board seeks comments on the proposal, the issues and the costs and benefits of the proposal. Applicable federal requirements: There are no federal requirements applicable to the VPA permit program. Other information: In addition, the agency has performed certain analyses on the proposal related to purpose, need, impacts and alternatives which are available to the public upon request.

STATEMENT

Subject: The subject of the proposed regulation is the administration of the Virginia Pollution Abatement (VPA) permit program. The proposed VPA Permit Regulation will delineate the procedures and requirements to be followed in connection with VPA permits issued by the SWCB pursuant to the State Water Control Law.

Substance: This proposed regulation will: (1) include definitions specific to the VPA permitting process; (2) delineate the activities for which permits are required, when permits are prohibited, and list activities which are excluded from the need for a permit; (3) establish the information requirements for applying for a VPA permit; (4) list conditions which are applicable to all permits and those applicable to specified categories of permits; (5) describe the process by which the SWCB shall establish limits and conditions in permits; (6) include provisions for public involvement in the permit issuance process; (7) include special requirements for treatment plants approaching their design capacity and for the licensure of operators of treatment works; (8) establish causes for the transfer, modification, revocation and reissuance, and termination of permits; (9) recognize certain special program areas such as animal feeding operations, general permits and the disposal of pollutants into wells; and (10) identify the SWCB's intention to enforce permits.

Impact: This regulation will impact all of the approximately 900 current and projected holders of Virginia Pollution Abatement permits. However, except for sewage sludge use and disposal permittees, there should not be a significant difference in the administration of these permits or the costs incurred by permittees under the new regulation compared to the previous Permit Regulation (VR 680-14-01). VPA permits have generally been issued to two categories of discharges: land application of sludge and animal feeding operations. Those permittees who currently hold VPA permits for the use or disposal of sewage sludge may be required to obtain VPDES permits or they may have to obtain permits from another state agency with responsibility for sludge handling

and disposal. The other primary category of discharges that hold VPA permits is the animal feeding operations and this change will not affect them. A separate regulation that is currently being promulgated will require a fee from applicants for VPA permits, ranging from \$4,500 for municipal wastewater treatments works to \$200 for operations covered by general permits.

Issues: Public participation to date has raised the issue of the SWCB's intention to permit sludge generators under VPDES permits, rather than VPA permits. This change may cause some confusion as the permits are converted from one program to another.

The timing of implementing the new provisions of the proposed regulation in permits which have already been issued was raised during the public comment period. The staff indicated that any changes required by the new regulation would be implemented when existing permits are reissued or modified for other causes.

A suggestion was made that the proposed regulation include the management of pollutants from "other waste" as well as from industrial waste and sewage. The SWCB intends that these sources will be covered under the regulation.

Many parts of the Permit Regulation, VR 680-14-01, which have been applied to VPA permits in the past, are derived from the federal NPDES regulations and are more applicable to the VPDES permits. Where appropriate those provisions have been deleted from the proposed VPA regulation.

Basis: The basis for this proposed regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(7) authorizes the SWCB to adopt rules governing the procedures of the SWCB with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes; Sections 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the SWCB to regulate discharges of sewage, industrial wastes and other wastes; and §§ 62.1-44.20 and 62.1-44.21 allow the SWCB the right of entry to obtain information or to require information to be furnished by an owner.

Purpose: This proposed regulation is designed to administer the Virginia Pollution Abatement permit program to control the management of pollutants which do not result in a point source discharge of pollutants to surface waters of the state.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on July 19, 1993, to Doneva Dalton, Department of Environmental

Calendar of Events

Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, P.O. Box 11143 Richmond, VA 23230, telephone (804) 527-5059.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

June 15, 1993 - 8:30 a.m. – Open Meeting

June 16, 1993 - 8:30 a.m. – Open Meeting

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct regulatory review.

July 21, 1993 - 8:30 a.m. – Open Meeting

Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to conduct board business and other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

LEGISLATIVE

HOUSE APPROPRIATIONS COMMITTEE

† **May 17, 1993 - 9:30 a.m. – Open Meeting**

General Assembly Building, 910 Capitol Square, 9th Floor Committee Room, Richmond, Virginia.

A monthly meeting.

Contact: Linda Ladd, General Assembly Bldg., 910 Capitol Square, 9th Floor, Richmond, VA 23219, telephone (804) 786-1837.

JOINT COMMISSION ON COMMONWEALTH'S WORKFORCE

† **May 26, 1993 - 10 a.m. – Open Meeting**

General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

An open meeting. (SJR 279)

Contact: John McE. Garrett, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or W. Echelberger, Senate Finance Staff, 910 Capitol Square, 10th Floor, Richmond, VA 23219, telephone (804) 786-4400.

VIRGINIA HOUSING STUDY COMMISSION

May 20, 1993 - 10 a.m. – Public Hearing

Arlington Public Library, 1015 North Quincy Street, Arlington, Virginia.

May 27, 1993 - 2 p.m. – Public Hearing

General Assembly, 910 Capitol Square, House Room C, Richmond, Virginia.

June 10, 1993 - 10 a.m. – Public Hearing

Old Dominion University, Life Science Building, Elkhorn Avenue and 43rd Street, Mills Godwin Auditorium, Room 102, Norfolk, Virginia.

A public hearing to receive comments on the following:

1. HJR 442 (claims pursuant to failure of FRT plywood);
2. HJR 489 (blighted and deteriorated housing);
3. HJR 163 (ongoing from 1992 - homelessness in Virginia); and
4. Other issues related to affordable housing in the Commonwealth.

Contact: Persons wishing to speak should contact Nancy M. Ambler, Executive Director, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 225-3797; additional information may be obtained from Nancy D. Blanchard, Virginia Housing Study Commission, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986, Ext. 565.

JOINT SUBCOMMITTEE CONTINUING THE STUDY OF THE ISSUES, POLICIES, AND PROGRAMS RELATING TO INFECTION WITH HUMAN IMMUNODEFICIENCY VIRUSES

† **June 7, 1993 - 2 p.m. – Open Meeting**

General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet to continue with its study of issues regarding human immunodeficiency viruses. (HJR 692)

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING PROCEDURAL ASPECTS OF THE TRIAL, APPEAL AND COLLATERAL PROCEEDINGS OF CAPITAL CASES

† **May 24, 1993 - 2 p.m. – Open Meeting**

General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of an organizational meeting. (HJR 402)

Contact: Frank Ferguson, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE CONTINUING THE STUDY OF VEHICLES POWERED BY CLEAN TRANSPORTATION FUELS

† **June 2, 1993 - 1:30 p.m.** – Open Meeting
VDOT Auditorium, 1700 North Main Street, Suffolk, Virginia.

The subcommittee will meet to continue with its study of issues relating to vehicles powered by clean transportation fuels and to tour VDOT's alternative fuel facility in Suffolk. (HJR 100)

Contact: Alan Wambold, Research Associate, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

May 17

Hearing Aid Specialists, Board for
† House Appropriations Committee
Local Emergency Planning Committee - Prince William County, Manassas City and Manassas Park City
† Waste Management Facility Operators, Board for

May 18

Housing Development Authority, Virginia
Psychology, Board of
Real Estate Appraiser Board
Virginia Museum Board of Trustees
- Collections Committee
† Virginia Small Business Advisory Board

May 19

Agriculture and Consumer Services, Board of
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Contractors, Board for
Land Surveyors, Board for
Networking Users Advisory Board, State
Professional Engineers, Board for

† Social Services, State Board of
Water Control Board, State

May 20

Agriculture and Consumer Services, Board of
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
Environmental Quality, Department of
Game and Inland Fisheries, Board of
Health, Department of
- Commissioner's Waterworks Advisory Committee
Historic Resources, Department of
† Interior Designers, Board for
Optometry, Board of
† Social Services, State Board of
Virginia Museum Board of Trustees
- Finance Committee
Water Control Board, State
Sewage Handling and Disposal Advisory Committee
Virginia Military Institute
- Board of Visitors

May 21

Game and Inland Fisheries, Board of
Information Management, Council on
Interdepartmental Regulation of Children's Residential
Facilities
- Coordinating Committee
Landscape Architects, Board for
Social Work, Board of
Transportation Safety Board, Virginia

May 24

Alcoholic Beverage Control Board
† Governor's Job Training Coordinating Council
† Health Professions, Board of
- Ad-Hoc Committee on Practitioner Self-Referral
Lottery Department, State
† Procedural Aspects of the Trial, Appeal and
Collateral Proceedings of Capital Cases, Joint
Subcommittee Studying
Water Control Board, State

May 25

Branch Pilots, Board for
Virginia Health Services Cost Review Council

May 26

Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Commonwealth's Workforce, Joint Commission on
Compensation Board
Mental Health, Mental Retardation and Substance
Abuse Services Board, State
Real Estate Board
Virginia War Memorial Foundation
Water Control Board, State

May 27

Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

Calendar of Events

- † Education, Board of
Real Estate Board
Rehabilitative Services, Board of
- May 28**
† Education, Board of
Elections, Board of
- June 1**
† Higher Education for Virginia, State Council of
Hopewell Industrial Safety Council
- June 2**
Health, Department of
† Local Emergency Planning Committee - Winchester
Sewage Handling and Disposal Appeals Review Board
† Vehicles Powered by Clean Transportation Fuels,
Joint Subcommittee Continuing the Study of
- June 3**
Local Emergency Planning Committee - Chesterfield
County
Medicine, Board of
Water Control Board, State
- June 4**
Medicine, Board of
- Credentials Committee
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee
- June 5**
Medicine, Board of
- June 6**
Medicine, Board of
- June 7**
† Arts, Virginia Commission for the
† Human Immunodeficiency Viruses, Joint
Subcommittee Continuing the Study of the Issues,
Policies, and Programs Relating to Infection with
Polygraph Examiners Advisory Board
- June 8**
Higher Education for Virginia, State Council of
Virginia Resources Authority
- June 9**
† Contractors, Board for
- Complaints Committee
† Soil Scientists, Board for Professional
- June 10**
Governor's Advisory Board on Aging
- June 11**
Governor's Advisory Board on Aging
- June 14**
- Intergovernmental Relations, Advisory Commission on
- June 15**
Waterworks and Wastewater Works Operators
- June 16**
Contractors, Board for
† Historic Resources, Department of
- State Review Board and Board of Historic
Resources
Waterworks and Wastewater Works Operators
- June 17**
Game and Inland Fisheries, Board of
† Waste Management Board, Virginia
Water Control Board, State
- June 18**
Game and Inland Fisheries, Board of
Interdepartmental Regulation on Children's Residential
Facilities
- Coordinating Committee
† Professional Counselors, Board of
- June 21**
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
- June 22**
Violent Crime, Governor's Commission on
Virginia Health Services Cost Review Council
- June 23**
† Historic Resources, Board of
- June 24**
Education, Board of
Medical Assistance Services, Department of
- Drug Utilization Review Board
Water Control Board, State
- June 30**
Agriculture and Consumer Services, Board of
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- July 1**
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
- July 21**
Waterworks and Wastewater Works Operators, Board
for
- May 17**
Historic Resources, Department of

PUBLIC HEARINGS

Calendar of Events

- May 18**
Historic Resources, Department of
- May 19**
Agriculture and Consumer Services, Department of
Auditor of Public Accounts
Commerce, Board of
- May 20**
Virginia Housing Study Commission
Waste Management Board, Virginia
- May 25**
Medical Assistance Services, Department of
Virginia Health Services Cost Review Council
- May 26**
Air Pollution Control Board, State
Commerce, Board of
Medical Assistance Services, Department of
† Water Control Board, State
- May 27**
Child Day-Care Council
† Medical Assistance Services, Department of
† Social Services, State Board of
Virginia Housing Study Commission
- June 1**
Child Day-Care Council
† Social Services, State Board of
- June 2**
Child Day-Care Council
† Social Services, State Board of
- June 3**
Child Day-Care Council
† Social Services, State Board of
- June 10**
Virginia Housing Study Commission
Transportation, Department of
- June 15**
† Water Control Board, State
- June 21**
† Water Control Board, State
- June 22**
† Water Control Board, State
- June 23**
† Water Control Board, State
- June 24**
† Education, State Board of
- June 30**
Agriculture and Consumer Services, Board of
- † Water Control Board, State
July 20
Psychology, Board of

Calendar of Events
