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OF REGULATIONS

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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† Indicates entries since last publication of the Virginia Register

STATE AIR POLLUTION CONTROL BOARD

Notice is hereby given in accordance with this agencyparticipation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-05. Regulation for the Control of Emissions from Fleet Vehicles.** The purpose of the proposed action is to develop a regulation that will conform to the federal and state requirements for control of emissions from fleet vehicles in the Northern Virginia, Richmond and Hampton Roads ozone nonattainment areas.

Public meeting: A public meeting will be held by the department in House Committee Room Four, State Capitol Building, Richmond, Virginia, at 10:30 a.m. on Thursday, July 8, 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 Monday, June 14, 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 Thursday, June 24, 1993. If you are selected to be on the group, you are encouraged to attend the public meeting mentioned above and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation language for department consideration through the collaborative approach of regulatory negotiation and consensus.

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 (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 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 new 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. 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 coughing when healthy adults are exercising, and more serious effects in the young, old, and infirmed.

Northern Virginia has been identified by EPA as having a serious ozone air pollution problem. The problem originates in large part from motor vehicle emissions including fleet vehicles. A vehicle emissions inspection program has been in place in Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required. The 1990 amendments to the Clean Air Act have required the fleet owners in the Northern Virginia nonattainment area to purchase vehicles that conform to stricter exhaust emission standards. These vehicles are known as Clean Fuel Fleet (CFF) vehicles.

In addition, the 1993 General Assembly adopted legislation that requires a clean fuel fleet program in the Richmond and Hampton Roads nonattainment areas. The legislation requires fleet owners to include an increasing percentage of CFF vehicles in their fleet purchases beginning in the 1998 model year. As more and more vehicles in the affected fleets become CFF vehicles the total emissions from the fleets will decrease. This, in turn, can

substantially reduce the amount of volatile organic compounds emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Adopt regulations which will provide for implementation of a clean fuel fleets program to satisfy the provisions of state law and the Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. For example, one control measure that has been identified as an equivalent alternative to the clean fuel fleets program is a low emissions vehicle (LEV) program; however, legal authority to adopt a LEV program does not exist.

3. Take no action to adopt regulations and continue to operate fleets 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 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 marginal for the Hampton Roads nonattainment area, moderate for the Richmond nonattainment area, and serious for the Northern Virginia nonattainment area.

Section 246 (a) of Part C of Title II of the federal Act requires CFF programs in all urbanized areas with 1980 populations of 250,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas.

The Act requires that a percentage of all new fleet vehicles purchased by each affected fleet operator in serious nonattainment areas (Northern Virginia) in model year 1998 and thereafter be clean-fuel vehicles. In addition, the law further requires that the vehicles shall use clean alternative fuels when operating in the covered areas. Fleet operators have their choice of CFF vehicles and type of clean fuel to be used and requires that the choice of fuel be made available to fleet operators. The phase-in requirements for new purchases are:

Vehicle Type & Gross Vehicle Weight (GVW)	Model Year 1998	Model Year 1999	Model Year 2000
Light-duty vehicles and trucks up to 6,000 lbs GVW	30%	50%	70%
Light-duty trucks between 6,000 and 8,500 GVW	30%	50%	70%
Heavy-Duty trucks above 8,500 GVW	50%	50%	50%

[1] Interpretation that LDTs over 6,000 GVW are included in the same phase-in schedule as LTDs below 6,000 pounds GVW.

Credit shall be provided to fleet operators for the purchase of more clean-fuel vehicles than required and/or the purchase of CFF vehicles which meet more stringent standards than required. Credits may be used to demonstrate compliance or may be sold or traded for other fleet operators to demonstrate compliance. Credits may be held or banked for later use with no decrease in the credit value.

In addition to the federal requirement for Northern Virginia, legislation passed by the Virginia General Assembly also requires the CFF program to be implemented in the Richmond and Hampton Roads areas. This requirement is not only for fleet vehicles registered in the affected nonattainment areas, but also applies to motor vehicles NOT registered in the nonattainment areas, but have either (i) a base of operations or (ii) a majority of their annual travel in one or more of the mentioned localities.

The law also provides for the development of regulations by the State Corporation Commission and the Department of Environmental Quality to ensure the availability of clean alternative fuels to affected fleet operators should it be deemed necessary.

Statutory Authority: § 46.2-1179.1 of the Code of Virginia (Chapters 234 and 571 of the 1993 Acts of Assembly).

Written comments may be submitted until the close of business Thursday, July 8, 1993, to the Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Mary E. Major, Senior Policy Analyst, Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-7913.

ALCOHOLIC BEVERAGE CONTROL BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Alcoholic Beverage Control Board intends to consider amending regulations entitled: **VR 125-01-1 through 125-01-7. Regulations of the Virginia Alcoholic Beverage Control Board.** The purpose of the proposed action is to receive information from

industry, the general public, and licensees of the board concerning adopting, amending, or repealing the board's regulations. A public hearing will be held on Wednesday, October 27, 1993, at 10 a.m. in the First Floor Hearing Room, 2901 Hermitage Road, Richmond, Virginia, to receive comments from the public.

Statutory Authority: §§ 4-7(1), 4-11, 4-36, 4-69.2, 4-72.1, 4-98.14, and 4-103(b) of the Code of Virginia.

Written comments may be submitted until June 30, 1993.

Contact: Robert N. Swinson, Administrator to the Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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 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.

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider 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.

† 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 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** The purpose of the proposed action is to revise the current regulations to be consistent with the 1993 amendments to the Certificate of Public Need Law.

Statutory Authority: §§ 32.1-12 and 32.1-102 et seq. of the Code of Virginia.

Written comments may be submitted until June 23, 1993.

Contact: Wendy V. Brown, Project Review Manager, Department of Health, Office of Resources Development, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

BOARD OF HEALTH PROFESSIONS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Health Professions intends to consider promulgating regulations entitled: **Regulations Governing Practitioner Self-Referral.** The purpose of the proposed action is to implement the Board of Health Professions' authority to administer and enforce the Virginia Practitioner Self-Referral Act. This is a request for general comments on proposed rulemaking only. Proposed regulations, when developed, will be submitted for comment under the provisions of the Administrative Process Act, and a public hearing will be held on the proposed regulations.

Statutory Authority: Chapter 869 of the 1993 Acts of Assembly.

Written comments may be submitted until June 19, 1993.

Contact: Richard D. Morrison, Ph.D., Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or facsimile (804) 662-9114.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider promulgating regulations entitled: **VR 370-01-003. Regulations of the Virginia Health Services - Patient Level Data Base System.** The purpose of the proposed regulation is to implement the responsibilities of the council in relation to the Patient Level Data System in Virginia. Chapter 638 of the 1993 Acts of Assembly requires that the council adopt regulations regarding submission of patient level data by inpatient hospitals and regarding establishment of filing fees.

Statutory Authority: § 9-164 of the Code of Virginia and Chapter 638 of the 1993 Acts of Assembly.

Written comments may be submitted until June 15, 1993.

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.

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.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care: Nonenrolled Provider Reimbursement.** The purpose of the proposed action is to reimburse nonenrolled providers at amounts which are more consistent with reimbursement amounts for enrolled providers.

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

Written comments may be submitted until June 14, 1993, to Scott Crawford, Manager, 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 Street, 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 465-02-01. Regulations Governing the Practice of Medicine, Oseopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed regulation is to add §§ 2.1 D and 2.4 to specify professorial, fellowship, internship and residency limited licensure.

Statutory Authority: §§ 54.1-2400, 54.1-2936 and 54.1-2937 of the Code of Virginia.

Written comments may be submitted until July 2, 1993, to Hilary H. Conner, M.D., Executive Director, 6606 West Broad Street, Richmond, VA 23229.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., Richmond, VA 23229, telephone (804) 662-9908.

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.

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.

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

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 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 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.

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.

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.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Rev. HH - Standards of Performance for Regulated Medical Waste Incinerators, Rule 5-6, §§ 120-05-0601 through 120-05-0618)**

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

Public Hearing Dates:
July 13, 1993 - 7 p.m.
July 14, 1993 - 7 p.m.
July 15, 1993 - 7 p.m.
Written comments may be submitted until close of business on July 30, 1993.
(See Calendar of Events section for additional information)

Summary:

The regulation amendments concern provisions covering standards of performance for new and modified regulated medical waste incinerators. The amendments establish:

1. Emission limits for particulate matter, carbon monoxide, hydrogen chloride, dioxins and furans, visible emissions, fugitive dust/emissions, odor, toxic pollutants, and radioactive materials;

2. Incinerator unit operating parameters and practices for the minimization and removal of pollution, including temperature limitations, scrubber requirements, and operator training;

3. Test methods and procedures for monitoring compliance;

4. Specific emission and operational parameter monitoring requirements; and

5. Notification, records and reporting requirements, including specific content and frequency information regarding measurements of opacity, emission rates, and temperatures.

PART V.
STANDARDS OF PERFORMANCE FOR REGULATED MEDICAL WASTE INCINERATORS.
(RULE 5-6.)

§ 120-05-0601. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this rule apply is each regulated medical waste incinerator.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule do not apply to incinerators the construction or modification of which as defined in Part VIII commenced prior to September 1, 1993.

D. The provisions of this rule do not apply to combustion units or incinerators burning materials that do not include regulated medical waste.

§ 120-05-0602. Definitions.

For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in this section.

As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

"Commercial regulated medical waste incinerator" means any regulated medical waste incinerator that burns regulated medical waste if more than 25% of such waste is generated off-site.

"Continuous emission monitoring system" means a monitoring system for continuously measuring the emissions of a pollutant from an affected facility.

"Dioxins" and "furans" means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

"Four-hour block average" means the average of all hourly emission rates or temperatures when the affected facility is operating and combusting regulated medical waste measured over four-hour periods of time from midnight to 4 a.m., 4 a.m. to 8 a.m., 8 a.m. to noon, noon to 4 p.m., 4 p.m. to 8 p.m., 8 p.m. to midnight.

"Incinerator" means any furnace or device used in the process of burning any type of waste for the primary purpose of destroying matter or reducing the volume of the waste by removing combustible matter or both.

"Maximum demonstrated particulate matter control device inlet temperature" means the maximum four-hour block average temperature measured at the final

particulate matter control device inlet during the most recent dioxin/furan test demonstrating compliance with the emission standard in § 120-05-0606. If more than one particulate matter control device is used in a series at the affected facility, the maximum four-hour block average temperature is measured at the final particulate matter control device.

"Off-site" means any site that does not meet the definition of on-site.

"On-site" means (i) the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties are at a crossroads intersection and access is by crossing, as opposed to going along, the right-of-way; or (ii) noncontiguous properties owned by the same person but connected by a right-of-way controlled by the same person and to which the public does not have an access.

"Pathological waste" means a solid waste that is human tissues, organs, body parts, fetuses, placentas, effluences or similar material, and animal tissue, organs, body parts, fetuses, placentas, effluence or similar material from animals exposed to human pathogens for purposes of testing or experimentation.

"Rated capacity" means the waste charging rate expressed as the maximum capacity guaranteed by the equipment manufacturer or the maximum normally achieved during use, whichever is greater.

"Regulated medical waste" means any solid waste identified or suspected by the health care profession as being capable of producing an infectious disease in humans. A waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to humans, such organism is not routinely and freely available in the community, and such organism has a significant probability of being present in significant quantities and with sufficient virulence to transmit disease. In addition, regulated medical waste shall include the following:

1. Discarded cultures, stocks, specimens, vaccines, and associated items likely to have been contaminated with organisms likely to be pathogenic to humans, discarded etiologic agents, and wastes from production of biologicals and antibiotics likely to have been contaminated by organisms likely to be pathogenic to humans;

2. Wastes consisting of human blood, human blood products, and items contaminated by free-flowing human blood;

3. Pathological wastes;

4. Used sharps likely to be contaminated with organisms that are pathogenic to humans, and all sharps used in patient care;

5. The carcasses, body parts, bedding material, and all other wastes of animals intentionally infected with organisms likely to be pathogenic to humans for purposes of research, in vivo testing, production of biological materials or any other reason, when discarded, disposed of, or placed in accumulated storage;

6. Any residue or contaminated soil, water, or debris resulting from cleanup of a spill of any regulated medical waste; and

7. Any waste contaminated by or mixed with regulated medical waste.

Regulated medical waste shall not include:

1. Wastes contaminated only with organisms which are not generally recognized as pathogenic to humans, even if those organisms cause disease in other plants or animals, and which are managed in complete accord with all regulations of the U.S. Department of Agriculture and the Virginia Department of Agriculture and Consumer Services;

2. Meat or other food items being discarded because of spoilage or contamination, unless included in subdivisions 1 through 7 above;

3. Garbage, trash, and sanitary waste from septic tanks, single or multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas, except for waste generated by provision of professional health care services on the premises, provided that all medical sharps shall be placed in a container with a high degree of puncture resistance before being mixed with other wastes or discarded;

4. Used products for personal hygiene, such as diapers, facial tissues, and sanitary napkins; and

5. Material, not including sharps, containing small amounts of blood or body fluids, and no free-flowing or unabsorbed liquid.

"Regulated medical waste incinerator" means any incinerator used in the process of burning regulated medical waste.

"Sharps" means needles, scalpels, knives, broken glass, syringes, pasteur pipettes and similar items having a point or sharp edge.

"Solid waste" shall have the meaning ascribed thereto in § 10.1-1400 of the Code of Virginia. However, for purposes of this rule, the following materials are not solid wastes:

1. Domestic sewage, including wastes that are not stored and are disposed of in a sanitary sewer system (with or without grinding);

2. Any mixture of domestic sewage and other wastes that pass through a sewer system to a wastewater treatment works permitted by the State Water Control Board or the Department of Health;

3. Human remains under the control of a licensed physician or dentist, when the remains are being used or examined for medical purposes and are not abandoned materials; and

4. Human remains properly interred in a cemetery or in preparation by a licensed mortician for such interment or cremation.

§ 120-05-0603. Standard for particulate matter.

No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any particulate emissions in excess of the following limits:

1. For incinerators with a rated capacity equal to or greater than 1,000 pounds per hour: 0.010 grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

2. For incinerators with a rated capacity equal to or greater than 500 pounds per hour and less than 1,000 pounds per hour: 0.03 grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

3. For incinerators with a rated capacity less than 500 pounds per hour: 0.10 grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

§ 120-05-0604. Standard for carbon monoxide.

No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any carbon monoxide emissions in excess of the following limits:

1. For incinerators with a rated capacity equal to or greater than 500 pounds per hour: 25 parts per million volume dry average per operating cycle or per day, whichever is less in duration, corrected to 7.0% oxygen (dry basis). An operating cycle shall be the period of time from the initial loading of waste into the incinerator through the burn-down cycle.

2. For incinerators with a rated capacity less than 500 pounds per hour: 50 parts per million volume dry one hour average corrected to 7.0% oxygen (dry basis).

§ 120-05-0605. Standard for hydrogen chloride.

No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any hydrogen chloride emissions in excess of 20 parts per million dry volume, corrected to 7.0% oxygen (dry basis).

§ 120-05-0606. Standard for dioxins and furans.

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator with a rated capacity equal to or greater than 500 pounds per hour any total dioxin or furan emissions in excess of 8 grains per billion dry standard cubic feet corrected to 7.0% oxygen (dry basis).

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any dioxin or furan emissions that will result in a maximum annual risk in excess of 1 in 1,000,000. Ambient air concentrations and risk assessments shall be determined using air quality analysis techniques and methods acceptable to the board.

§ 120-05-0607. Standard for visible emissions.

A. The provisions of Rule 5-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply except that the provisions in subsection B of this section apply instead of § 120-05-0103 A of Rule 5-1.

B. No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator any visible emissions which exhibit greater than 5.0% opacity. Failure to meet the requirements of this section because of the presence of water vapor shall not be a violation of this section.

§ 120-05-0608. Standard for fugitive dust/emissions.

The provisions of Rule 5-1 (Emission Standards for Visible Emissions and Fugitive Dust/Emissions) apply.

§ 120-05-0609. Standard for odor.

The provisions of Rule 5-2 (Emission Standards for Odor) apply.

§ 120-05-0610. Standard for toxic pollutants.

The provisions of Rule 5-3 (Emission Standards for Toxic Pollutants) apply, including those provisions that apply to emissions of hydrogen chloride, except that the provisions of § 120-05-0606 apply to emissions of dioxins and furans.

§ 120-05-0611. Standard for radioactive materials.

Radioactive materials shall be handled in accordance with the regulations of the U.S. Environmental Protection Agency, the U.S. Nuclear Regulatory Commission, and the Virginia Department of Health.

§ 120-05-0612. Compliance.

A. In addition to the provisions of § 120-05-02 (Compliance), the provisions of subsections B through I of this section apply.

B. The owner of an affected facility shall operate the facility within parameters as specified below in accordance with methods and procedures acceptable to the board.

1. For incinerators with a rated capacity equal to or greater than 500 pounds per hour, the temperature, measured at the final particulate matter control device inlet, shall not exceed 30°F above the maximum demonstrated particulate matter control device inlet temperature.

2. The minimum primary chamber temperature shall be 1400°F or the manufacturer's recommended operating temperature, whichever is higher, for a period of time needed to achieve complete pyrolysis.

3. A secondary combustion chamber with afterburner is required. The minimum secondary chamber temperature shall be 2000°F or the manufacturer's recommended operating temperature, whichever is higher, for a period of no less than two seconds.

4. Combustion chamber thermostats are to ignite and fire the auxiliary burners automatically in order to maintain the primary and secondary chamber temperatures.

5. An interlock system to prevent incinerator feeding prior to attaining the minimum secondary chamber temperature is required.

6. The burn-down cycle shall be automatically controlled and the minimum burn-down cycle time shall be set at the manufacturer's recommended time.

7. No incinerator shall be charged more than its rated capacity.

8. For incinerators with a rated capacity equal to or greater than 500 pounds per hour, the flue gas temperature at the outlet of the final control device shall not exceed 300°F unless a demonstration is made that an equivalent collection of condensible heavy metals and toxic organics can be achieved at a higher temperature.

9. For incinerators with a rated capacity equal to or greater than 500 pounds per hour and less than 1,000 pounds per hour, hydrogen chloride emissions shall be controlled by a scrubber system capable of removing at least 90% by weight of the hydrogen chloride entering the scrubber system.

10. For incinerators with a rated capacity equal to or greater than 1,000 pounds per hour, hydrogen chloride emissions shall be controlled by a scrubber capable of removing at least 95% by weight of the hydrogen chloride entering the scrubber system.

11. The minimum sorbent injection rate, expressed in pounds per hour of active neutralizing agent, shall be calculated as follows:

SImin = 1.2 (SItest)(% ANA)

where:

SImin = minimum sorbent injection rate (pounds per hour).

SItest = pounds per hour of sorbent injected during the performance test, while the hydrogen chloride inlet concentration was highest.

% ANA = percent by weight of active neutralizing agent in the sorbent.

C. An owner may request that compliance with the applicable emission limit be determined using carbon dioxide measurements corrected to an equivalent of 7.0% oxygen. The relationship between oxygen and carbon dioxide levels for the affected facility shall be established during the initial performance tests. In such cases, the applicable emission limit shall be corrected to the established percent carbon dioxide without the contribution of auxiliary fuel carbon dioxide when using a fuel other than natural gas or liquified petroleum gas.

D. Each chief incinerator operator and shift supervisor shall obtain and keep current either a provisional or operator certification in a manner acceptable to the board.

E. No owner shall allow an affected facility to operate at any time without a certified shift supervisor, as provided by subsection D of this section, on duty at the affected facility.

F. The owner of an affected facility shall develop and update, on a yearly basis, a site-specific operating manual that shall, at a minimum, address the following elements of regulated medical waste incinerator operation:

1. Summary of the applicable standards;

2. Description of basic combustion theory applicable to a regulated medical waste incinerator;

3. Procedures for receiving, handling, and feeding regulated medical waste;

4. Procedures for regulated medical waste incinerator startup, shutdown, and malfunction;

5. Procedures for maintaining proper combustion air supply levels;

6. Procedures for operating the regulated medical waste incinerator within the emission standards and operational parameters established under this rule;

7. Procedures for responding to periodic upset or off-specification conditions;

8. Procedures for minimizing particulate matter carryover;

9. Procedures for monitoring the degree of regulated medical waste burnout;

10. Procedures for handling ash;

11. Procedures for monitoring regulated medical waste incinerator emissions; and

12. Procedures for reporting and recordkeeping.

G. The owner of an affected facility shall establish a program for reviewing the operating manual annually with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane/load handlers.

H. The initial review of the operating manual, as specified under subsection G of this section, shall be conducted prior to assumption of responsibilities affecting incinerator operation by any person required to undergo training under subsection G of this section. Subsequent reviews of the manual shall be carried out annually by each such person.

I. The operating manual shall be kept in a readily accessible location for all persons required to undergo training under subsection G of this section. The operating manual and records of training shall be available for inspection by the board upon request.

§ 120-05-0613. Test methods and procedures.

A. In addition to the provisions of § 120-05-03 (Performance testing), the provisions of subsections B through E of this section apply.

B. The owner of an affected facility shall conduct performance tests and reduce associated data as specified below in accordance with methods and procedures acceptable to the board.

1. For all incinerators: particulate matter, carbon monoxide and visible emissions.

2. For all incinerators with a rated capacity equal to or greater than 500 pounds per hour: hydrogen chloride emissions and control efficiency of scrubber systems for hydrogen chloride emissions. Hydrogen chloride performance tests shall begin no earlier than one hour after the initial loading of waste into the incinerator. Hourly feed rate during hydrogen chloride performance tests shall be determined as the total amount of waste loaded into the incinerator between the beginning of the first sampling run of the day and the end of the last sampling run of the day, divided by the total number of hours elapsed.

3. For all incinerators with a rated capacity equal to or greater than 500 pounds per hour: dioxin and furan emissions.

C. Frequency of testing as required in subsection B of this section shall be required as follows.

1. For all incinerators: on-site initial performance tests.

2. For incinerators with a rated capacity equal to or greater than 1,000 pounds per hour: on-site annual performance tests.

D. Regulated medical waste incinerators which are of standardized manufacture and are shipped as assembled incinerators from the factory of manufacture may be exempt from on-site initial particulate matter and carbon monoxide performance testing, provided that:

1. The incinerator has a rated capacity of less than 100 pounds per hour;

2. The manufacturer has obtained a satisfactory test on a identical incinerator of similar size and design certified by a registered engineer;

3. The test has been certified for the same type of waste as designated for the incinerator subject to the permit; and

4. The test results are submitted to the board and found acceptable (waste type, incinerator design, acceptable feed range, equivalent operating parameters, equivalent auxiliary fuel, acceptable methodology).

E. Required on-site testing shall be done while the incinerator is operated at 90% or greater of the rated capacity and operated by trained plant personnel only.

§ 120-05-0614. Monitoring.

A. In addition to the provisions of § 120-05-04 (Monitoring), the provisions of subsection B of this section apply.

B. The owner of an affected facility shall install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as specified below in accordance with methods and procedures acceptable to the board.

1. For all incinerators with a rated capacity equal to

or greater than 500 pounds per hour, continuous measurement and display is required for primary and secondary chamber temperatures. Thermocouples shall be located at or near the primary and secondary chamber exits.

2. For all incinerators with a rated capacity equal to or greater than 1,000 pounds per hour, continuous recording is required for the secondary chamber temperature.

3. For all incinerators with a rated capacity equal to or greater than 1,000 pounds per hour, continuous measurement, display and recording is required for opacity, with the output of the system recording on a six-minute average basis.

4. For all incinerators with a rated capacity equal to or greater than 1,000 pounds per hour, continuous measurement, display and recording is required for flue gas stream temperature at the inlet to the final particulate matter control device. Temperatures shall be calculated in four-hour block arithmetic averages.

5. For all incinerators with a rated capacity equal to or greater than 1,000 pounds per hour, continuous measurement, display and recording is required for carbon monoxide emissions, with carbon dioxide or oxygen diluent monitor.

6. A pH meter is required for each wet scrubber system.

7. A flow meter to measure the sorbent injection rate is required for each wet scrubber system.

§ 120-05-0615. Notification, records and reporting.

A. In addition to the provisions of § 120-05-05 (Notification, records and reporting), the provisions of subsections B through F of this section apply.

B. Following initial notification as required under § 120-05-05 A 3, the owner of an affected facility shall submit the initial performance test data, the performance evaluation of the continuous emission monitoring systems using the applicable performance specifications in 40 CFR Part 60 Appendix B, and the maximum demonstrated particulate matter control device inlet temperature established during the dioxin and furan test.

C. Following initial notification as required under § 120-05-05 A 3, the owner of an affected facility shall submit quarterly compliance reports for hydrogen chloride, carbon monoxide, secondary combustion chamber temperature and maximum demonstrated particulate matter control device inlet temperature to the board containing the information for each applicable pollutant or parameter. The hourly average values recorded under subdivision F 2 of this section are not required to be included in the quarterly reports. Such reports shall be postmarked no later than the 30th day following the end of each calendar quarter.

D. The owner of an affected facility shall submit quarterly excess emission reports, as applicable, for opacity. The quarterly excess emission reports shall include all information recorded under this subsection which pertains to opacity, and a listing of the six-minute average opacity levels recorded under this subsection for all periods when such six-minute average levels exceeded the opacity limit under § 120-05-0607. The quarterly report shall also list the percentage of the affected facility operating time for the calendar quarter during which the opacity continuous emission monitoring system was operating and collecting valid data. Such excess emission reports shall be postmarked no later than the 30th day following the end of each calendar quarter.

E. The owner of an affected facility shall submit reports to the board of all annual performance tests for particulate matter, carbon monoxide, dioxins and furans, and hydrogen chloride, as applicable, from the affected facility. For each annual dioxin and furan performance test, the maximum demonstrated particulate matter control device inlet temperature shall be reported. Such reports shall be submitted when available but in no case later than the date of the required submittal of the quarterly report specified under subsection C of this section covering the calendar quarter following the quarter during which the test was conducted.

F. The owner of an affected facility shall maintain and make available to the board upon request records of the following information for a period of at least five years:

1. Dates of emission tests and continuous monitoring measurements.

2. The emission rates and parameters measured using performance tests or continuous emission or parameter monitoring, as applicable, as follows:

a. The following measurements shall be recorded in computer-readable format and on paper:

(1) The six-minute average opacity levels;

(2) All one-hour average hydrogen chloride emission rates at the inlet and outlet of the acid gas control device if compliance is based on a percent reduction and outlet emission limit; and

(3) All one-hour average carbon monoxide emission rates, secondary combustion chamber temperatures and final particulate matter control device inlet temperatures.

b. The following average rates shall be computed and recorded:

(1) All 24-hour daily geometric average percent

reductions in hydrogen chloride emissions and all 24-hour daily geometric average hydrogen chloride emission rates;

(2) All four-hour block or 24-hour daily arithmetic average carbon monoxide emission rates, as applicable; and

(3) All four-hour block arithmetic average secondary combustion chamber temperatures and final particulate matter control device inlet temperatures.

3. Identification of the operating days when any of the average emission rates, percent reductions, or operating parameters specified under this subsection or the opacity level have exceeded the applicable limit, with reasons for such exceedances as well as a description of corrective actions taken.

4. Identification of operating days for which the minimum number of hours of emissions rate or operational data have not been obtained, including reasons for not obtaining sufficient data and a description of corrective actions taken.

5. Identification of the times when emissions rate or operational data have been excluded from the calculation of average emission rates or parameters and the reasons for excluding data.

6. The results of daily carbon monoxide continuous emission monitor system drift tests and accuracy assessments as required under 40 CFR Part 60, Appendix F, Procedure 1.

7. The results of all applicable performance tests conducted to determine compliance with the particulate matter, carbon monoxide, dioxins and furans, and hydrogen chloride limits. For all applicable dioxin and furan tests, the maximum demonstrated particulate matter control device inlet temperature shall be recorded along with supporting calculations.

8. Records of continuous emission or parameter monitoring system data for opacity, carbon monoxide, secondary combustion chamber temperature and final particulate matter control device inlet temperature data.

9. Records showing the names of the persons who have completed review of the operating manual and the date of the initial review and all subsequent annual reviews.

10. For commercial regulated medical waste incinerators, records of the amount and types of waste brought in from off-site.

§ 120-05-0616. Registration.

The provisions of § 120-02-31 (Registration) apply.

§ 120-05-0617. Facility and control equipment maintenance or malfunction.

The provisions of § 120-02-34 (Facility and control equipment maintenance or malfunction) apply.

§ 120-05-0618. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of Part V (New and Modified Sources) and Part VIII (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

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 380-03-01. College Scholarship Assistance Program Regulations (REPEALING).**

Title of Regulaton: **VR 380-03-01:1. College Scholarship Assistance Program Regulations.**

Statutory Authority: § 23-38.47 of the Code of Virginia.

Public Hearing Date: N/A

Summary:

Sections 23-38.45 through 23-38.52 of the Code of Virginia authorize the State Council of Higher Education to develop and promulgate regulations for operation of the College Scholarship Assistance Program (CSAP). The major provisions of the CSAP regulations are institutional participation, distribution of funds, student eligibility, award selection, administration, and responsibility of recipients.

VR 380-03-01:1. College Scholarship Assistance 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.

"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.

"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" 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 at or below the baccalaureate degree level which requires at least one academic year (30 semester hours or its equivalent) to complete. Programs that provide religious training or theological education are not eligible courses of study under the College Scholarship Assistance 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.

"Eligible institution" means a public or private, accredited, nonprofit degree-granting institution of higher education in Virginia whose primary purpose is to provide collegiate education and not to provide religious training or theological education.

"Exceptional financial need" means a student's Expected Family Contribution (EFC) is less than one-half of the student's total Cost of Attendance, as determined by an eligible institution.

"Expected Family Contribution" (EFC) means the amount the student and the student's 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 need 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 method of need analysis approved by the council, and other financial aid that an institution includes in the student's total financial aid package.

"Fiscal year" means the period extending from July 1 to June 30.

"Full-time study" means enrollment for at least 12 credit hours per semester 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 credit courses which normally are not counted toward a certificate, diploma, or degree at the institution.

"Part-time study" means enrollment for six to 11 credit hours per semester or its equivalent. The total hours counted will not include courses taken for audit but may include required development or remedial courses and other elective credit courses which normally are not counted toward a certificate, diploma or degree at the institution.

"Participating institution" means any eligible postsecondary institution which has been approved by the council to participate in the College Scholarship Assistance Program.

"Program" means the College Scholarship Assistance Program (CSAP).

"Undergraduate student" means a student in a program leading to an associate's or bachelor's degree who has not earned a bachelor's or higher degree, and who is not classified by the institution as a "professional" or "graduate" student.

PART II.
INSTITUTIONAL PARTICIPATION.

§ 2.1. Application procedures.

To participate in the program, eligible institutions not previously approved by the council to participate must file formal application with the council no later than January 31 of the calendar year preceding the calendar year in which fall term grants would first be available to students.

Applications shall be addressed to the council's Financial Aid Coordinator and shall include:

1. Estimates of the number of students who would be eligible to receive grants under the program in the first and second years of participation;

2. A copy of the Fiscal Operations Report and Application to Participate in Federal Student Financial Aid Programs (FISAP);

3. A copy of the most recent independent audit of financial aid programs, as required under the federal Single Audit Act; and

4. Certifications from the institution's chief executive officer that the institution:

a. Meets eligibility requirements for participation, namely, that it is an accredited, nonprofit, Virginia degree-granting institution of higher education whose primary purpose is not to provide religious training or theological education;

b. Will furnish whatever data the council may request in order to verify its institutional eligibility claims to the satisfaction of the council;

c. Will promptly notify the council within 30 days following any change in governance or mission that may affect the institution's status as an eligible institution; and

d. By its governing body has authorized its adherence to the requirements of these regulations, as the same are now constituted or hereafter amended, until such time as the institution may withdraw from participation in the program.

All documents must be on file before any funds are disbursed.

PART III.
DISTRIBUTION OF FUNDS.

§ 3.1. Institutional allocations.

Participating institutions will receive from the council on or before an annually established date a notice of the amount of CSAP funds projected to be available for the next fiscal year. Final notice of available funds is dependent on provisions of federal funds.

Institutional allocations will be based on the aggregate need for grant funds as demonstrated by CSAP eligible applicants enrolled at each participating institution. The council will calculate the aggregate need using data reported by the institution in the fall preceding the fiscal year for which the allocation will be made.

The aggregate need for grant funds is the sum of the positive financial need of all CSAP eligible applicants enrolled for at least part-time study at a participating institution. For purposes of this calculation, an individual student's financial need is calculated as follows:

Need =	Cost of Attendance	Expected Family Contribution	Total Grant Aid

Cost of Attendance includes a nine-month standardized living allowance, an allowance for books and supplies set each year by the council, and the calculated tuition and fees. The latter amount is based on a student's credit hour enrollment, as reported for the individual student by the institution, and the in-state tuition and fee schedules for part-time and full-time in-state undergraduates that annually are reported to the council. The allowance for books is prorated based on the student's credit hour enrollment. Cost of Attendance for the summer session uses the same variables but is based on a three-month standardized living allowance.

The Expected Family Contribution (EFC) amount used for purposes of determining allocations is that reported for the individual student by the institution using a council-approved need analysis method for federal need-based aid.

Total Grant Aid is the sum of all gift aid except the reported portion of grants that was derived from endowment funds and grants awarded under the CSAP. Loans and work-study awards are not included in gift aid.

The aggregate need of an individual institution, expressed as a percentage of the statewide aggregate need of all participating institutions, determines the institution's share of the program funds.

Eligible students at institutions approved to participate in the program beginning in a specific year will be assured equal access to the total available program funds based on their aggregate financial need. Equal access may result in the reduction of funds at other participating institutions if new funds are not provided for the additional students.

§ 3.2. Reallocations of unused funds.

On or before March 15 of each year, participating institutions shall report to the council the amount of any funds which will not be used by the end of the academic year or the amount of additional funds above the level of the allocation which could be used if additional funds were available.

The council's estimate of unused funds will be substituted for the institution's where the institution fails to file a fund usage report. On or before an annually established date, the council will notify institutions that request additional funds of the amount of any supplemental allocations. Supplemental allocations will be based on the financial need of the students at institutions

requesting additional funds, the amount of the funds requested, and the amount of funds available for reallocation.

§ 3.3. 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 received by the institutions under the program may be used only to pay awards to students. The funds are held in trust on behalf of the Commonwealth of Virginia by the institutions for the intended student beneficiaries and may not be used for any other purpose.

PART IV.
STUDENT ELIGIBILITY.

§ 4.1. Student eligibility.

In order to be eligible to receive an award under the program, the applicant must:

1. Be a domiciliary resident of Virginia eligible for in-state tuition rates as defined in § 23-7.4 of the Code of Virginia;

2. Not receive more than a cumulative total of five years of assistance under the program;

3. Be maintaining satisfactory academic progress as defined by the participating institution for purposes of determining eligibility for federal Title IV student aid funds;

4. Not be in default on a federal student loan, owe a refund on a federal grant, or be ineligible on any other legal grounds to receive federal student aid funds which comprise a portion of the individual awards made under the program;

5. Meet the criterion of exceptional need and demonstrate a positive financial need for grant aid, as determined by the participating institution; and

6. Be enrolled for at least part-time study in an eligible course of study at a participating institution.

The duration of CSAP eligibility is related to the length of time normally required to complete the student's certificate or degree at a particular institution. A financial aid transcript must be reviewed to determine if a transfer student has already used the maximum eligibility for CSAP. If a student is in a dual degree program at a four-year college or university that results in the simultaneous awarding of both an undergraduate and a graduate or professional degree, the student shall be considered eligible for CSAP only for the undergraduate portion of the program.

PART V.
AWARD SELECTION.

§ 5.1. Criteria for determining financial need.

An institution shall determine a student's financial need using a nationally-accepted method of need 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 financial need.

§ 5.2. Priorities in making awards.

Because the number of eligible applicants will normally exceed the number that can be assisted with the CSAP funds allocated to an institution, the institutional aid officer's professional recommendation will determine which candidates receive CSAP awards as well as the specific amount of each individual's award.

In determining each student's need for additional grant aid, the institutional aid officer may consider the individual student's educational need, family financial circumstances, the amount of other types of aid (e.g., loans, work-study) available to the student, and any unique circumstances affecting the student's ability to enroll and complete a course of study.

§ 5.3. Individual awards.

Individual awards are to be made for the academic year, a portion thereof, or the summer term. The maximum individual award for the academic year shall not exceed any award limit set forth in the Appropriations Act.

PART VI.
ADMINISTRATION.

§ 6.1. The council.

The council will provide assistance, interpretation of policy and regulations, and guidance to the institutions in their handling of administrative matters.

§ 6.2. Participating institutions.

Institutions shall:

1. Act as an agent for the council to evaluate student eligibility, select award recipients and determine

individual award amounts, in accordance with the criteria set forth in these regulations;

2. Provide information which the council may require to ensure that CSAP recipients do not receive grant funds in excess of their actual financial need;

3. Certify that the recipients are enrolled for at least part-time study, are making satisfactory progress in eligible courses of study, and, to the extent that federal funds comprise a part of the awards, meet all applicable criteria prescribed by federal laws and regulations for recipients of federal funds;

4. Secure and provide to the council such information regarding student award recipients as the council deems necessary for the proper administration of the program;

5. Act, with the student's authorization, as the student's agent to receive and hold funds for use as student assistance under the program; and

6. Furnish periodic reports and other pertinent information as may be required by the council. The reports shall include but not be limited to copies of institutional financial aid audit reports and audited financial statements.

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. The chief executive officer shall, in addition, indicate whether the primary institutional representative may designate a single subordinate who may act as an alternate representative for routine administrative operational matters at the campus. At multi-campus institutions, an alternate representative may be designated for each branch campus if the chief executive officer authorizes the appointment of alternate representatives. 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. It is the responsibility of the primary representative to advise the council in a similar fashion of changes in alternate representative(s), if any.

§ 6.3. Responsibility of recipients.

A recipient of an award under the program shall notify the institution, in writing, of any name or permanent address changes.

BOARD OF PSYCHOLOGY

Title of Regulation: **VR 565-01-2. Regulations Governing the Board of Psychology.**

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

NOTICE: The Board of Psychology is **WITHDRAWING** the proposed amendments to its regulation entitled, "VR 565-01-2, Regulations Governing the Board of Psychology," which were published in 9:12 VA.R. 1864-1879 March 8, 1993. The proposed amendments were to the application and renewal fees. The board intends to propose new amendments which will also include new examination fees and amended application and renewal fees.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **VR 672-40-01. ~~Infectious~~** *Regulated Medical* **Waste Management Regulations.**

Statutory Authority: § 10.1-1402 of the Code of Virginia and Chapters 751, 773, and 774 of the 1993 Acts of Assembly.

Public Hearing Dates:
July 13, 1993 - 7 p.m.
July 14, 1993 - 7 p.m.
July 15, 1993 - 7 p.m.
Written comments may be submitted through July 30, 1993.
(See Calendar of Events for additional information)

Summary:

Throughout this regulation, all references to infectious waste are changed to regulated medical waste to better coordinate with nomenclature in federal regulations. In Part I, the definitions, new terms include alternative treatment method, ASTM, conflict, limited small clinic, nonstationary health care provider, regulated medical waste, and start-up. Twenty-three definitions are deleted. The statute and solid waste regulations are cited as supplementing these regulations and 19 other definitions are modified, including solid waste which is now the same as the statutory definition.

In Part II, the purpose and authority for the regulations and the relationship to other state and local rules are established. The amended regulations are proposed to become effective on September 1, 1993. Facilities with existing permits may continue under permit conditions that conflict with the amendments for six months. A process for the review and approval of innovative treatment technology is created.

Part III is devoted to defining regulated medical waste. A general, descriptive definition of regulated medical waste is combined with a specific list of controlled regulated medical wastes. Lists are included of activities and wastes that are exempted from all or part of the regulations. The partial exemption for private office practice and home practice is expanded

to encompass small clinic practices.

Permits for storage, treatment and disposal of regulated medical wastes are required in Part IV. Qualifying on-site facilities may be considered to have a permit (by rule), without formal application procedures, after their operators make a notification to the department of their identity. Persons choosing to operate under a permit by rule must provide certifications from their local government that their facilities comply with local ordinances. Detailed rules for packaging the waste are listed. Minimum standards for spill management, reusable container management, financial assurance, record keeping and closure are established. Regulated medical waste must be treated by one of five treatment processes, treated by an approved innovative technology, or disposed of in a sewer system. Changes allow nonstationary health care providers to hold a permit by rule for facilities at their base of operation's collection point. Packaging requirements changes include provisions for management of reusable containers (Parts IV, V and VI), deleted orange color coding of packages, and updated referenced packaging standards. Changes in treatment requirements allow alternative and innovative technologies to be used under defined conditions. Treaters of regulated medical waste are required to keep records that the waste does not contain hazardous waste or radioactive materials and to file quarterly reports of off-site shipments.

Storage and transportation requirements in Parts V and VI are amended to require refrigeration starting seven days after generation. Part VI changes allow mailing of waste to disposal facilities. Part VII operational standards for incineration facilities are modified to require segregated ash and dust testing. Part VIII is operational standards for steam sterilization facilities. A newly inserted Part IX provides standards for the new alternative treatment technologies of chlorine disinfections, small scale heat treatment, and microwave treatment. A requirement for grinding, shredding or other methods to render the waste unrecognizable is added for all nonincineration processes.

Part X sets procedures for acquiring and holding a permit to store, treat or dispose of regulated medical waste. The 10 years of maximum permit life are retained and procedures for application for renewal are listed. Part XI provides procedures for acquiring and holding a special variance from the regulations. In Parts X and XI, previous details of permit application and petition procedures are replaced by specific referrals to similar parts of the Solid Waste Management Regulations, VR 672-20-10.

VR 672-40-01. Regulated Medical Waste Management Regulations.

PART I.

DEFINITIONS.

§ 1.1. *Definitions.*

The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise : . *Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia defines words and terms which supplement those in these regulations. The Virginia Solid Waste Management Regulations, VR 672-20-10, define additional words and terms which supplement those in the statute and these regulations. When the statute, as cited, and the solid waste management regulations, as cited, each define a word or term, the definition of the statute is controlling.*

~~*"Abandoned materials"* means any material that is:~~

~~1. Disposed of;~~

~~2. Burned or incinerated; or~~

~~3. Accumulated, stored or treated before or in lieu of being abandoned by being disposed of, burned or incinerated.~~

"Act" or *"regulations"* means the federal or state law or regulation last cited in the context unless otherwise indicated.

~~*"Active life"* of a facility means the period from the initial receipt of waste at the facility until the executive director receives certification of final closure.~~

"Alternative treatment method" means a method for the treatment of regulated medical waste that is not incineration or steam sterilization (autoclaving).

"Approved sanitary sewer system" means a network of sewers serving a facility which has been approved in writing by the Virginia Department of Health, including affiliated local health departments. Such sewer systems may be approved septic tank/drainfield systems and on-site treatment systems; or they may be a part of a collection system served by a NPDES permitted treatment works.

"Ash" means the residual waste material produced from an incineration process or any combustion.

"ASTM" means the American Society for Testing and Materials.

"Authorized representative" means the manager, superintendent, or person of equivalent responsibility responsible for the overall operation of a facility or an operational unit (i.e., part of a facility).

"Autoclave tape" means tape which changes color or becomes striped when subjected to temperatures that will provide sterilization of materials during treatment in an

autoclave or similar device.

"Board" means the Virginia Waste Management Board.

"Certification" means statement of professional opinion based on knowledge and belief.

"Clean Air Act" means 42 USC 1857 et seq. of 1963 as amended by PL 89-272, PL 89-675, PL 90-148, PL 91-604, PL 92-157, PL 93-319, PL 95-95 ~~and~~ , PL 95-190 , *PL 95-623, PL 96-209, PL 96-300, PL 97-23, PL 97-375, PL 98-45, PL 98-213, and PL 100-202* .

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

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

"Commonwealth" means the Commonwealth of Virginia.

~~*"Compliance schedule"* means a time schedule of remedial measures to be employed on a solid waste management facility which will ultimately upgrade it to conform to these regulations.~~

"Conflict" means that provisions of two documents, such as regulations or a permit, do not agree and both provisions cannot be complied with simultaneously. If it is possible for both provisions to be complied with, no conflict exists.

"Container" means any portable enclosure in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Contamination" means the degradation of naturally occurring water, air, or soil quality either directly or indirectly as a result of human activity; or the transfer of disease organisms, blood or other matter that may contain disease organisms from one material or object to another.

"Contingency plan" means a document setting out an organized, planned and coordinated course of action to be followed in the event of a fire, explosion, or release of *solid* waste or *solid* waste constituents which could threaten human health or the environment.

"CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) ; ~~Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576~~ , 33 USC 1251 et seq. *; PL 92-500, PL 93-207, PL 93-243, PL 93-592, PL 94-238, PL 94-273, PL 94-558, PL 95-217, PL 95-576, PL 96-148, PL 96-478, PL 96-483, PL 96-510, PL 96-561, PL 97-35, PL 97-117, PL 97-164, PL 97-216, PL 97-272, PL 97-440, PL 98-45, PL 100-4, PL 100-202, PL 100-404, and PL 100-668* .

"Department" means the Virginia Department of ~~Waste Management~~ *Environmental Quality* .

"Director" means the director of the Department of Environmental Quality.

~~*"Discarded material"* means a material which is abandoned, recycled, or considered inherently waste-like (as determined by the Executive Director on a case by case evaluation).~~

"Discharge" or *"waste discharge"* means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of *solid* waste into or on any land or state waters.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste ~~or waste~~ into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" means a facility or part of a facility at which *solid* waste is intentionally placed into or on any land or water, and at which the *solid* waste will remain after closure.

"Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

~~*"Draft permit"* means a document prepared under § 9.18 of these regulations indicating the executive director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit.~~

~~"Emergency permit" means a permit issued where an imminent and substantial endangerment to human health or the environment is determined to exist by the executive director.~~

"EPA" means the U.S. Environmental Protection Agency.

"Etiologic agents" means organisms defined to be etiologic agents in Title 49 of the U.S. Code of Federal Regulations at § 173.386.

~~"Executive director" means the executive director of the Department of Waste Management.~~

~~"Facility (activity)" means waste management facility as defined.~~

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency, or establishment of the federal government including any government corporation and the Government Printing Office.

~~*"Free liquids"* means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.~~

"Generator" means any person, by site location, whose

act or process produces *solid* waste identified or listed in Part III of these regulations or whose act first causes a *solid* waste to become subject to these regulations.

"Hazardous material" means a substance or material which has been determined by the *United States* Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated under 49 CFR 171 and 173.

"Hazardous waste" means any solid waste defined as a "hazardous waste" by the Virginia Hazardous Waste Management Regulations.

"Highly leak resistant" means that leaks will not occur in the container even if the container receives severe abuse and stress, but remains substantially intact.

"Highly puncture resistant" means that punctures will not penetrate the container even if the container receives severe abuse and stress, but remains substantially intact.

~~*"Incinerator"* means any enclosed device using controlled flame combustion.~~

~~*"Infectious waste"* means solid wastes defined to be infectious wastes in Part III of these regulations.~~

"Inherently waste like" means having one or more characteristics that are associated with *solid* waste materials and determined by the ~~executive~~ director to be a solid waste , *as prescribed in Part III of the Solid Waste Management Regulations, VR 672-20-10* .

~~*"In operation"* means facilities that are treating, storing, or disposing of waste.~~

~~*"Landfill"* means a disposal facility or part of a facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.~~

"Limited small clinic" means an office where fewer than 10 health care professionals practice, where no surgical procedures are performed, and that is under the total administrative control of one or more of those practitioners. A person practicing under a license issued by the Department of Health Professions is a health care pofessional.

~~*"Mode (of transportation)"* means any of the following transportation methods: rail, highway, air, or water.~~

~~*"Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.~~

"Motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer, or any combination thereof, propelled or drawn by mechanical power and used in transportation or designed for such use.

"Nonstationary health care providers" means those persons who routinely provide health care at locations that change each day or frequently. This term includes traveling doctors, nurses, midwives, and others providing care in patients' homes, first aid providers operating from emergency vehicles, and mobile blood service collection stations.

"NPDES" or *"National Pollutant Discharge Elimination System"* means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits pursuant to §§ *307,* 402, 318, and 405 of CWA. The term includes any state or interstate program which has been approved by the administrator *of the United States Environmental Protection Agency* .

"Off-site" means any site that does not meet the definition of on-site as defined in this part.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~*"Operator"* means the person responsible for the overall operation of a waste management facility.~~

"Owner" means the person who owns a *solid* waste management facility or part of a *solid* waste management facility.

"Package" or *"outside package"* means a packaging plus its contents.

"Packaging" means the assembly of one or more containers and any other components necessary to assure compliance with minimum packaging requirements under VRGTHM and these regulations.

"Pathological waste" means a solid waste that is human tissues, organs, body parts, fetuses, placentas, ~~effluences~~ *body fluids* or similar material; animal tissue, organs, body parts, fetuses, placentas, ~~effluence~~ *body fluids* or similar material from animals exposed to human pathogens for the purposes of testing or experimentation.

~~*"Permit"* means a control document issued by the Commonwealth pursuant to these regulations. The term "permit" includes any functional equivalent such as an authorization, license, or permit by rule.~~

"Permit by rule" means provisions of these regulations stating that a facility or activity is deemed to have a

permit if it meets the requirements of the provision.

"Permitted waste management facility" or *" permitted facility"* means a *solid* waste treatment, storage, or disposal facility that has received a permit in accordance with the requirements of the ~~department~~ *regulations* .

~~"Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, any interstate body, or federal government agency.~~

~~*"Personnel" or "facility personnel"* means all persons who work at, or oversee the operations of, a waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of these regulations.~~

"Physical construction" means excavation, movement of earth, erection of forms or structures, the purchase of equipment, or any other activity involving the actual preparation of the *solid* waste management facility.

"Principal corporate officer" means either:

1. 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 function for the corporation, or

2. 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.

"Principal executive officer" means ~~for the purposes of these regulations, a principal executive officer is defined as~~ *either* :

1. For a federal agency:

a. The chief executive officer of the agency; or

b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrators of EPA).

2. For a state agency: The chief executive officer of a department, board, commission, hospital, educational institution, or an authority.

3. For a municipality: The chief executive officer of a county, city, or town.

"Processing" means preparation, treatment, or conversion of *solid* waste by a series of actions, changes, or functions that bring about a decided result.

"Publicly owned treatment works" or *"POTW"* means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality as defined by § 502(4) of the CWA.

"Putrescible waste" means solid waste which contains material capable of being decomposed by microorganisms.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ~~of 1976~~ (42 USC 6901 et seq.).

~~*"Recycled material"* means a material which is reused or reclaimed.~~

"Regulated medical waste" means solid wastes defined to be infectious wastes in Part III of these regulations.

~~*"Regulation"* means the control, direction and governance of solid and waste activities by means of the adoption and enforcement of laws, ordinances, rules and regulations.~~

"Sanitary sewer system" means ~~an approved sanitary sewer system~~ *a system for the collection and transport of sewage, the construction of which was approved by the Department of Health or other appropriate authority* .

"Secondary container" means a storage device into which a container can be placed for the purpose of containing any leakage of *solid* waste from ~~such emplaced~~ *the original* container.

"Section" means a subpart of these regulations and when referred to all portions of that part apply.

"Sharps" means needles, scalpels, knives, broken glass, syringes, pasteur pipettes and similar items having a point or sharp edge.

"Shipment" means the movement or quantity conveyed by a transporter of a *solid* waste between a generator and a designated facility or a subsequent transporter.

~~*"Signature"* means the name of a person written with his own hand.~~

"Site" means the land or water area upon which a facility or activity is physically located or conducted ; including , but not limited to , adjacent land used for utility systems such as repair, storage, shipping, or processing areas, or other areas incident to the controlled facility or activity.

~~"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant,~~

~~or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.~~

"Solid waste" means any ~~discarded material that is not exempted by these regulations elsewhere or that is not excluded by variance granted by the executive director~~ *garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agriculture operations, or community activities, but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended .*

"Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid wastes whether or not such facility is associated with facilities generating such wastes or otherwise.

"Spill" means any accidental or unpermitted spilling, leaking, pumping, pouring, emitting, or dumping of wastes or materials which, when spilled, become wastes.

"Start-up" means the beginning of a combustion operation from a condition where the combustor unit is not operating and less than 140°F in all areas.

"Storage" means the holding, including during transportation, of *more than 64 gallons of* waste, at the end of which the *solid* waste is treated, disposed, or stored elsewhere. *Storage also means the transfer of a load of regulated medical waste from one vehicle to another during transportation, or the parking of a vehicle containing regulated medical waste during transport for 24 hours or more.*

~~"SW-846" means test methods for evaluating solid waste, physical/chemical methods, EPA publication SW-846.~~

"Training" means formal instruction, supplementing an employee's existing job knowledge, designed to protect human health and the environment via attendance and successful completion of a course of instruction in *solid* waste management procedures, including contingency plan implementation, relevant to those operations connected with the employee's position at the facility.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of *solid* waste are held during the normal course of transportation.

"Transportation" means the movement of *solid* waste by air, rail, highway, or water.

~~*"Transporter"* means a person engaged in the off-site transportation of waste by air, rail, highway, or water.~~

"Transport vehicle" means ~~a motor~~ *any* vehicle ~~, or rail car~~ used for the transportation of cargo ~~by any mode . Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.~~

~~*"Treatment"* means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize such waste, as to recover energy or material resources from such wastes; so as to render such waste safe for transport or disposal, amenable for recovery, amenable for storage or reduced in volume.~~

"Vector" means a living animal, insect or other arthropod which ~~transmits~~ *may transmit* an infectious disease from one organism to another.

"VRGTHM" means Virginia Regulations Governing the Transportation of Hazardous Materials promulgated by the ~~Department of~~ *Virginia* Waste Management Board as authorized by §§ 10.1-1450 through 10.1-1454 of the Code of Virginia.

"Waste generation" means the act or process of producing a *solid* waste.

~~*"Waste management"* means the systematic control of the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of wastes.~~

"Waste management facility" means all contiguous land and structures, other appurtenances, and improvements thereon used for treating, storing, and disposing of waste.

"Waste Management Unit" means any unit at a treatment, storage or disposal facility which is seeking or possesses a permit, *or* which has received solid waste (as defined in these regulations) at any time, including units that are not currently active.

PART II.
LEGISLATIVE AUTHORITY AND GENERAL INFORMATION.

§ 2.1. Authority for regulations.

These regulations are ~~promulgated~~ *issued* pursuant to the Virginia Waste Management Act, Chapter 14, Title 10.1 of the Code of Virginia ~~(hereinafter Code)~~ which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of that chapter the Virginia Waste Management Act and the federal acts.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to establish standards

and procedures pertaining to ~~infectious waste~~ *regulated medical waste* management in this Commonwealth; in order to protect the public health and public safety, and to enhance the environment and natural resources.

§ 2.3. Administration of regulations.

A. The Virginia Waste Management Board promulgates and enforces regulations that it deems necessary to protect the public health and safety, the environment, and natural resources.

B. The ~~executive~~ director is authorized to issue orders to require any person to comply with these regulations or to require such steps as he deems necessary to bring about compliance. Orders shall be issued in writing through certified mail and shall be issued in accordance with provisions of ~~the Administrative Process Act, Title 9, Chapter 1.1:1, Code of Virginia. The executive director is directed to administer these regulations in accordance with the Virginia Waste Management Act~~ *applicable law. Nothing contained in these regulations shall be considered to prevent or curtail the director in the exercise of any power granted to that office by statute, executive order, or separate action of the board* .

§ 2.4. Applicability of regulations.

A. These regulations apply to all persons who ~~generate infectious waste~~ *manage regulated medical waste* ; own or operate ~~infectious waste~~ *regulated medical waste* management facilities or allow ~~infectious waste~~ *regulated medical waste* management facilities to be operated on their property in this Commonwealth; to those who ~~intend~~ *seek approval* to engage in these activities and to all persons who manage ~~infectious waste~~ *regulated medical wastes* ; except those specifically exempted or excluded elsewhere in these regulations.

B. All existing ~~infectious waste~~ *regulated medical waste* management facilities, including those operating under a permit on the effective date of these regulations, shall comply with these regulations *, except as provided in this section. Existing permits will remain valid, except that conditions or waivers in existing permits that conflict with these amended regulations are void on the date six months from the effective date of these amended regulations. Operators of existing facilities are required to comply with these amended regulations within six months following their effective date and may comply at any time with any item contained in these regulations in lieu of a conflicting condition contained in an existing permit. A conflict shall only exist if it is not possible to obey both an item of the permit and an item of the regulations. If it is possible to obey both, no conflict shall exist.* ~~If the executive director determines that an existing permit is in conflict with these regulations, the permit will be amended to fully comply with these regulations.~~

§ 2.5. Severability.

A. *The board intends that these regulations be severable, so that* if any provision or part of these regulations is held invalid, unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of these regulations and their application.

B. These regulations supersede and replace all previous regulations of the ~~Department of Waste Management~~ *Virginia Waste Management Board* to the extent that those prior regulations conflict with the regulations presented herein. Where there does not exist a conflict between the prior regulations and those presented herein, no replacement shall be deemed to occur and the prior regulations shall remain.

C. These regulations shall remain in effect until the Virginia Waste Management Board ~~, in subsequent formal action,~~ shall amend, rescind or otherwise alter them. ~~Such an action will be specific in its detail and cite these regulations by their title.~~ Where there appears to be a conflict ~~with~~ *between* these regulations and *other* regulations adopted at a future date, and such future regulations do not specifically clarify these regulations, these regulations shall be ~~superior~~ *controlling* except for the exemption of hazardous waste noted in Part III.

D. These regulations are completely separate from all federal or local governmental regulations.

§ 2.6. Relationship to other bodies of regulation.

A. Solid Waste Management Regulations.

These regulations are solid waste management regulations that address special needs for ~~infectious waste~~ *regulated medical waste* management. Any ~~infectious waste~~ *regulated medical waste* management facility shall also conform to general solid waste management regulations issued by the ~~department~~ *board* and any special solid waste management regulations such as those defining financial assurance requirements. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein and the others, these regulations are ~~superior~~ *controlling* .

B. Hazardous Waste Management Regulations.

Any ~~infectious waste~~ *regulated medical waste* management facility shall also comply with any applicable sections of the hazardous waste management regulations issued by the department. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein and the hazardous waste management regulations, the ~~later~~ *latter* regulations are ~~superior~~ *controlling* .

C. Hazardous Materials Transportation Regulations.

Intrastate shipment of hazardous materials are subject to regulations of the department. If there is a ~~mutually exclusive~~ conflict between the details of regulations herein

and the hazardous materials transportation regulations, the ~~later~~ *latter* are ~~superior~~ *controlling* .

D. Regulations of other agencies.

If there is a ~~mutually exclusive~~ conflict between the regulations herein and adopted regulations of another agency of the Commonwealth, the provisions of these regulations are set aside to the extent necessary to allow compliance with the regulations of the other agency.

E. Local government ordinances.

~~The department will notify local governing bodies of disposal facilities for infectious waste management that are proposed within their jurisdiction. The department is prevented from issuing permits for facilities for which it has not received a notice or waiver from the local governing body described in Title 10.1, § 10.1-1408.1 of the Code of Virginia. In general, local governing bodies operate under varying powers and adopt ordinances they deem appropriate.~~ Nothing herein either precludes or enables a local governing body to adopt ordinances. ~~While the department has the previously noted duty to defer to local governing body authority related to the zoning of a site, its technical and administrative regulations set out herein are completely independent of local government ordinances.~~ Compliance with one body of regulation does not insure compliance with the other; and, normally, both bodies of regulation must be complied with fully. ~~If compliance with any local government's ordinance would prevent compliance with a regulation of the Commonwealth contained herein, that local government's ordinance is preempted to the extent, and only to the extent, that the Commonwealth's regulations can be complied with fully.~~

~~§ 2.7. Effective date of regulations.~~

~~The effective date of these regulations is May 2, 1990.~~

§ 2.7. Innovative technology review process.

A. In order to assist the director in evaluating the appropriateness of new technologies, the director may, at his discretion, appoint a temporary Innovative Technology Review Panel as an advisory committee to the department. The panel shall consist of no less than seven and no more than 15 members. Members shall be citizens of the Commonwealth and include at least: one person knowledgeable in the field of microbiology, one person knowledgeable in the practice of medicine, one person knowledgeable in the practice of epidemiology, one person knowledgeable in federal or state regulations pertaining to the management or treatment of regulated medical waste, one person knowledgeable in the field of chemistry, one person knowledgeable in the practice of infection control, and one person knowledgeable in chemical or mechanical engineering.

B. The Innovative Technology Review Panel will meet as requested by the director and be supported by the department. The panel will review applications or petitions received from the director concerning technologies for the treatment or management of regulated medical waste as alternatives to those prescribed in regulations of the board or previously authorized by the director.

At the conclusion of each deliberation, the panel will report its findings to the director. In its deliberations, the panel will consider the effectiveness and reliability of the innovative technology relative to herein prescribed treatment methods, its potential to minimize solid waste generation and prevent pollution, and potential impacts on the public health or environment.

C. Following the receipt of the findings of the panel by the director, the director shall publish a notice in the Virginia Register. The notice shall describe the findings of the panel, methods of obtaining copies of the findings and related information, and procedures for petitioning for a variance to employ the innovative technology at a facility. The notice shall assert the director's intention to consider the findings of the panel in reaching a decision regarding petitions for a variance from these regulations that incorporate employment of the innovative technology.

D. Persons proposing to operate a facility using the innovative technology shall petition for and receive a variance for use of that technology at their site before its construction or installation. Procedures established in the Virginia Solid Waste Management Regulations, VR 672-20-10, §§ 9.2 and 9.6, shall be used in the petition for the variance and issuance of the variance.

PART III.
IDENTIFICATION AND LISTING OF ~~INFECTIOUS WASTE~~ *REGULATED MEDICAL WASTES* .

§ 3.1. General.

A. Purpose and scope.

1. Wastes identified in Part III are ~~infectious waste~~ *regulated medical wastes* which are subject to Virginia ~~Infectious Waste~~ *Regulated Medical Waste* Management Regulations.

2. The basic definition of solid waste appears in Part I along with other pertinent definitions and shall be referred to for the exact meaning of the terms used. Additional detailed descriptions of solid wastes, exclusions and listings required to arrive at the proper classification of wastes are the subject of this part.

~~3. Inherently waste-like materials. The executive director may rule that a specific material is inherently waste-like for the purposes of these regulations. Any person may petition the executive director for a ruling or the executive director may issue a rule without receiving a petition. In making a ruling, the executive~~

~~director will consider the generation of the material, its use and the possible impact of the ruling on health and the environment.~~

B. Materials rendered ~~noninfectious~~ *nonregulated* .

Wastes that were once ~~infectious~~ *regulated* and were managed in accord with these regulations; and which, because of treatment, are exempted under § 3.2 or are excluded under § 3.3 are no longer ~~infectious waste~~ *regulated medical wastes* and shall be managed in accordance with such other regulations of the ~~department~~ *board* that apply.

1. Packaging. Exempt or excluded *solid* waste shall not be packaged as ~~infectious waste~~ *regulated medical waste* or, if the *solid* waste was once ~~infectious~~ *regulated* , it shall bear a label clearly indicating that it is not ~~infectious~~ *regulated* and an explanation why it is no longer ~~infectious~~ *regulated* . *Solid* waste packaged as ~~infectious waste~~ *regulated medical waste* and not in compliance with this section ~~are infectious waste~~ *is regulated medical waste* .

2. Recordkeeping. If the *solid* waste is no longer ~~infectious~~ *regulated* because of treatment, the generator or permitted facility shall maintain a record of the treatment for three years afterward to include the date and type of treatment, type and amount of *regulated medical* waste treated, and the individual operating the treatment. Records for on-site treatment and shipping papers from commercial carriers for off-site treatment shall be maintained by the generator. Records for off-site treatment and shipping papers for off-site treatment shall be maintained by all permitted facilities. Generators or permitted facilities with more than one unit may maintain a centralized system of recordkeeping. All records shall be available for review upon request.

C. Recycled materials.

1. ~~Infectious waste~~ *Untreated regulated medical wastes* shall not be ~~recycled~~ *used, reused, or reclaimed* ; however, wastes that have been sterilized , *treated* or incinerated in accord with these regulations and are no longer ~~infectious waste~~ *regulated medical waste* may be *used, reused, or* reclaimed.

2. Bed linen, instruments, equipment and other materials that are routinely reused for their original purpose are not subject to these regulations until they are discarded and are a solid waste. ~~Handling of such reusable materials should follow the Center For Disease Control's "Guideline For Hospital Environmental Control: Cleaning, Disinfection, and Sterilization of Hospital Equipment," and "Guideline for Hospital Environmental Control: Laundry Services."~~ *These items do not include reusable carts or other devices used in the management of regulated medical waste (see § 5.6).*

D. Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.

Respondents in actions to enforce these regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, shall demonstrate that they meet the terms of the exclusion or exemption. In doing so, they shall provide appropriate documentation to demonstrate that the material is not a waste, or is exempt from regulation.

§ 3.2. Exemptions to the regulations.

Exemptions to these regulations include:

1. Composting of sewage sludge at the sewage treatment plant of generation and not involving other solid wastes.

2. Land application of wastes regulated by the State Board of Health, the State Water Control Board, or any other state agency with such authority.

3. Wastewater treatment or pretreatment facilities permitted by the State Water Control Board by a NPDES permit.

4. Management of hazardous waste as defined and controlled by the Virginia Hazardous Waste Management Regulations to the extent that any requirement of those regulations is in conflict with regulations herein.

5. ~~These regulations shall not apply to~~ Health care professionals who generate ~~infectious waste~~ *regulated medical waste* in the provision of health care services in their own office ~~or~~ , in the private home of a patient, *or in a limited small clinic, are exempt from those parts of these regulations listed in subdivision 6 of this section* provided the *regulated medical* waste is disposed of as authorized below:

a. With respect to ~~infectious waste~~ *regulated medical waste* other than sharps, the office or the patient's home ~~accumulates no more than 64 gallons~~ *does not accumulate sufficient regulated medical waste to create a storage facility as regulated by Part V* , the *regulated medical* waste is packaged and labeled in accord with § ~~4.3~~ *Part IV* , and the *regulated medical* waste is delivered ~~within 14 days~~ to a permitted ~~infectious waste~~ *regulated medical waste* treatment or storage facility *in accordance with Part VI* .

b. With respect to ~~infectious waste in the form of~~ sharps, the sharps are packaged in rigid, ~~leak-proof~~ *highly leak resistant* and *highly* puncture-resistant containers and labeled in accord with § ~~4.3~~ *Part IV* , and before filled to capacity, such containers are delivered to a permitted ~~infectious waste~~ *regulated medical waste* treatment or storage facility. Sharp

containers ~~to be sterilized shall be orange in color and marked with autoclave tape; all other sharps containers~~ shall be red in color. ~~Where orange colored sharps containers are unavailable, boxes of other colors may be used if a large orange label is affixed indicating it is for steam sterilization.~~

c. The health care professional transports or arranges for the transportation of the ~~infectious waste~~ *regulated medical waste* :

(1) ~~Directly~~ *Himself,* or by ~~an~~ *his* employee *who is also a health care professional* , or

(2) By a transporter registered as such with the Department of ~~Waste Management~~ *Environmental Quality* .

d. Notwithstanding any provisions to the contrary in these regulations, waste transported pursuant to ~~§ 3.2 5a(1)~~ *subdivision 5 c (1) of this section* shall be exempt from § 4.3 B 4 of these regulations.

e. The regulated medical waste is not held in the office, the limited small clinic, or the patient's home for more than seven days after it is generated.

6. Persons qualifying under subdivision 5 of this section shall be exempt from §§ 4.4, 4.7 A, 4.8, and 6.1 through 6.9 of these regulations, unless otherwise required by subdivision 5 of this section.

§ 3.3. Exclusions.

A. The following materials are not solid wastes for the purposes of this part ~~III~~ :

1. Domestic sewage, including wastes that are not stored and are disposed of in a sanitary sewer system with or without grinding;

2. Any mixture of domestic sewage and other wastes that pass through a sewer system to a wastewater treatment works permitted by the State Water Control Board or the State Department of Health;

3. Human remains under the control of a licensed physician or dentist, when the remains are being used or examined for medical purposes and are not ~~abandoned materials~~ *solid wastes* ; and

4. Human remains properly interred in a cemetery or in preparation by a licensed ~~mortician~~ *funeral directors or embalmers* for such interment or cremation.

B. The following solid wastes are not ~~infectious waste~~ *regulated medical wastes* :

1. Wastes contaminated only with organisms which are not generally recognized as pathogenic to humans, even if those organisms cause disease in other animals or plants; and which are managed in complete accord with all regulations of the U.S. Department of Agriculture and the Virginia Department of Agriculture and Consumer Services.

2. Meat or other food items being discarded because of spoilage or contamination, and not included in § 3.5.

3. Garbage, trash and sanitary waste from septic tanks, single or multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campground, picnic grounds and day-use recreation areas, except for waste generated by the provision of professional health care services on the premises, ~~shall be exempt from these regulations,~~ provided that all medical sharps shall be placed in a container with a high degree of puncture-resistance before being mixed with other wastes or disposed.

C. The following ~~infectious waste~~ *regulated medical wastes* are not subject to the requirements of these regulations:

1. Used products for personal hygiene, such as diapers, facial tissues and sanitary napkins.

2. Material, not including sharps, containing small amounts of blood or body fluids, ~~and~~ *but containing* no free flowing or unabsorbed liquid.

§ 3.4. Characteristics of ~~infectious waste~~ *regulated medical waste* .

A. A solid waste is a regulated medical waste if it meets either of the two criteria of subsection B or C of this section.

~~A.~~ *B.* Any solid waste, as defined in these regulations and which is not excluded from regulation is an ~~an infectious waste~~ *a regulated medical waste* if it is identified by the health care professional in charge as capable of producing an infectious disease in humans ~~; or if it is one of the controlled infectious waste listed in § 3.5~~ . A *solid* waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community , and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. *If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.*

~~B. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects the~~

~~presence of a contagious disease is the cause, wastes shall be managed in accordance with the specific pathogen suspected.~~

C. Any solid waste, as defined in these regulations and which is not excluded from regulation, is a regulated medical waste if it is listed in § 3.5 of these regulations.

§ 3.5. Lists of controlled ~~infectious waste~~ *regulated medical wastes* .

In addition to wastes described by the characteristics set forth in § 3.4, each *solid* waste or *solid* waste stream on the following lists is subject to these regulations , *unless exempted in § 3.2 or excluded in § 3.3 of these regulations* .

~~A.~~ *1.* Cultures and stock of microorganisms and biologicals. Discarded cultures, stocks, specimens, vaccines and associated items likely to have been contaminated by them are ~~infectious waste~~ *regulated medical wastes* if they are likely to contain organisms likely to be pathogenic to healthy humans. Discarded etiologic agents are ~~infectious waste~~ *regulated medical waste* . Wastes from the production of biologicals and antibiotics likely to have been contaminated by organisms likely to be pathogenic to healthy humans are ~~infectious waste~~ *regulated medical wastes* .

2. Blood and blood products. Wastes consisting of human blood, human blood products (includes serum, plasma, etc.) and items contaminated by ~~free-flowing~~ human blood are ~~infectious waste~~ *regulated medical waste* .

3. Pathological wastes. All pathological wastes and all wastes that are human tissues, organs, body parts, or body fluids are ~~infectious waste~~ *regulated medical waste* .

4. Sharps. Used ~~hypodermic needles, syringes, scalpel blades, pasteur pipettes, broken glass and similar devices~~ *sharps* likely to be contaminated with organisms that are pathogenic to healthy humans and all sharps used in patient care are ~~infectious waste~~ *regulated medical wastes* .

5. Animal carcasses, body parts, bedding and related wastes. When animals are intentionally infected with organisms likely to be pathogenic to healthy humans for the purposes of research, in vivo testing, production of biological materials or any other reason, the animal carcasses, body parts, bedding material and all other wastes likely to have been contaminated are ~~infectious waste~~ *regulated medical wastes* when discarded, disposed of or placed in accumulated storage.

6. Any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any ~~infectious waste~~ *regulated medical waste* .

7. Any *solid* waste contaminated by or mixed with ~~infectious waste~~ *regulated medical waste* .

PART IV.
GENERAL REQUIREMENTS.

§ 4.1. Permits and permits by rule.

No person , who is subject to these regulations , shall treat, store, or dispose of ~~infectious waste~~ *regulated medical waste* without a permit from the department to engage in those activities.

A. Persons required to have a permit.

Any person required to have a permit for activities in *the* management of ~~infectious waste~~ *regulated medical waste* shall ~~apply for and receive a~~ *make a formal application for a* permit in accord with Part ~~IX~~ *X* of these regulations; ~~except~~ *with the exception* that certain facilities may be deemed to have a permit by rule in accord with § 4.1 B of these regulations.

B. Person qualifying for a permit by rule.

Qualifying facilities are deemed to operate under a permit for ~~infectious waste~~ *regulated medical waste* management activities and their owners or operators are not required to comply with the permit issuance procedures of Part ~~IX~~ *X* of these regulations. While persons who own or operate qualifying facilities are not subject to Part ~~IX~~ *X* or required to have a written permit from the department for those qualifying facilities, they are subject to these regulations and all other parts thereof. If a person owns or operates ~~an infectious waste~~ *a regulated medical waste* management ~~facility~~ *unit* that does not qualify for a permit by rule, that person must comply with Part ~~IX~~ *X* and all other parts of these regulations for those ~~facilities~~ *units* , without regard to the presence of any other ~~facilities~~ *units* on the site that are operated under a permit by rule. Only those ~~facilities~~ *units* that are in complete compliance with all the following conditions are qualified and considered to be under a permit by rule for their operation, and ~~the~~ *no* permit by rule shall ~~be immediately terminated when the~~ *exist for a* facility ~~fails~~ *failing* to fulfill any of the following conditions:

1. The facility and all ~~infectious waste~~ *regulated medical waste* activities are in compliance with all parts of these regulations except Part ~~IX~~ *X* .

2. More than 75% (by weight, in a calendar year) of all ~~infectious waste~~ *regulated medical waste* that is stored, treated or disposed of by the facility is generated on-site , *or the site is a collection point for nonstationary health care providers and is not owned or operated by vendor of waste management services* .

3. No ~~infectious waste~~ *regulated medical waste* is

transported or received by the facility without being properly packaged and labelled in accordance with these regulations.

4. The activities at the facility do not involve the placing of ~~infectious waste~~ *regulated medical waste* directly into or on the land.

5. The owner or operator of the facility has notified the ~~executive~~ director in writing that the facility is operating under a permit by rule. The notice shall give the name of the facility; the mailing address of the facility; the location address of the facility; the type of business the facility serves; the type of facilities (treatment, storage, transportation, disposal) involving ~~infectious waste~~ *regulated medical waste* ; and the name, address and telephone number of the principal corporate officer.

6. The owner or operator of the facility has submitted the director a certification without qualification, conditions, or reservations from the local governing body (city, county, or town in which the facility is to be located) stating that the location and operation of the facility are consistent with all applicable ordinances.

~~C. Application to existing permitted facilities.~~

~~On the date these regulations become effective, they shall apply in full to infectious waste facilities that are operating on that date. Permits issued by the department prior to the effective date of these regulations shall be deemed to be amended such that any conditions contained in the permits that conflict with these regulations shall be void.~~

§ 4.2. Financial assurance requirements.

The department has adopted and will maintain separate regulation, Financial Assurance Regulations for Solid Waste Facilities, which are applicable in all parts to ~~infectious waste~~ *regulated medical waste* management facilities. Nothing in these regulations governing ~~infectious waste~~ *regulated medical waste* management shall be considered to delete or alter any requirements of the department as set out in Financial Assurance Regulations for Solid Waste Facilities.

§ 4.3. Packaging and labeling requirements for ~~infectious waste~~ *regulated medical waste* .

A. Responsibility for packaging and labeling.

1. The generator of ~~infectious waste~~ *regulated medical waste* is responsible for the packaging and labeling of ~~infectious waste~~ *regulated medical wastes* . As a bag ~~or other container~~ becomes full, it shall be sealed, packaged, labeled and managed as described in these regulations. Contractors or other agents may provide services to the generator, including packaging and labeling of ~~infectious waste~~ *regulated medical waste* ; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the ~~infectious waste~~ *regulated medical waste* as required by these regulations.

2. No person shall receive for transportation, storage, treatment or disposal any ~~infectious waste~~ *regulated medical waste* that is not packaged in accord with these regulations. Contractors or other agents may package or repackage ~~infectious waste~~ *regulated medical wastes* to comply with these regulations, if the packaging or repackaging is performed on-site where the ~~infectious waste~~ *regulated medical waste* was generated and no transportation, storage, treatment or disposal occurs prior to the packaging or repackaging. Nothing in this section shall prevent the proper repackaging and further transportation of ~~infectious waste~~ *regulated medical waste* that has spilled during transportation.

B. Packaging prior to storage, treatment, transport or disposal.

All ~~infectious waste~~ *regulated medical waste* shall be packaged as follows before it is stored, treated, transported or disposed of:

1. ~~Infectious waste~~ *Regulated medical wastes* shall be contained in two leak-proof plastic bags each capable of passing the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and each sealed separately, or one leak-proof, plastic bag inside a double-walled corrugated fiberboard box or equivalent rigid container. Free liquids ~~should~~ *shall* be contained in sturdy ~~leak-proof~~ *highly leak resistant* containers that resist breaking; heavy materials must be supported in boxes. Sharps shall be collected at the point of generation in *highly* puncture resistant containers, and those containers placed inside a plastic bag prior to storage or transport.

2. All bags containing ~~infectious waste~~ *regulated medical waste* shall be red in color ~~, except that infectious waste that is to be sterilized shall be contained in orange bags and marked with autoclave tape~~ . Waste contained in red bags shall be considered ~~infectious waste~~ *regulated medical waste* and managed as ~~infectious waste~~ *regulated medical waste* . ~~Wastes in orange bags shall be managed as regulated medical wastes prior to steam sterilization and as solid waste after steam sterilization. Waste in orange bags shall be sterilized before disposal and shall not be treated or disposed of by incineration, landfilling or any other method prior to steam sterilization.~~

3. Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

4. In addition to the plastic bag containers described

in this section, all ~~infectious waste~~ *regulated medical wastes* shall be enclosed in a ~~double-wall corrugated fiberboard box or equivalent~~ rigid container before it is transported off-site or in a motor vehicle on a street or highway. The box or container must meet the standards of *(1993)* 49 CFR ~~178.210~~ *171 through 178* for a classified strength of at least 275 ~~pound test and be class DOT-12A80 or DOT-12A50~~ *pounds per square inch using the Mullen Test or 48 pounds per inch using the Edge Crush Test .*

Note: The Mullen Test is T 810 om-80, Bursting Strength of Corrugated and Solid Fiberboard, by the Technical Association of the Pulp and Paper Industry, P. O. Box 105113, Atlanta, GA 30348. The Edge Crush Test is D 2808, Standard Test Method for Compressive Strength of Corrugated Fiberboard (Short Column Test), by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19013.

C. Labeling requirements.

All ~~infectious waste~~ *regulated medical waste* shall be labeled immediately after packaging. The label shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the label, and the label shall be at least three inches by five inches in size. The following information shall be included:

1. The name, address and business telephone number of the generator *and the date on which the bag of regulated medical waste was discarded .*

2. ~~"Infectious waste"~~ *"Regulated medical waste"* in large print.

3. The name, address and business telephone number of all ~~haulers~~ *transporters* or other persons to whose control the ~~infectious waste~~ *regulated medical waste* is transferred.

4. The Biological Hazard Symbol.

D. Etiological agents.

All etiological agents, as defined in *(1993)* 49 CFR ~~173.386~~ *171 through 178* , that are transported shall be packaged as described in *(1993)* 49 CFR ~~173.387~~ *171 through 178* and labeled as described in *(1993)* 49 CFR ~~173.388~~ *171 through 178* , even when that transport is wholly within the boundaries of the Commonwealth.

E. Sharps.

Sharps shall be placed directly into rigid and *highly* puncture-resistant containers.

F. Protection of packagers.

Persons packaging ~~infectious waste~~ *regulated medical waste* shall wear heavy gloves of neoprene or equivalent materials and other appropriate items of personal protection equipment. As a minimum, other appropriate equipment shall include that recommended in "CDC Guidelines for Isolation Precautions In Hospitals" (1983) by the Center for Disease Control, Hospital Infections Program, Center for Infectious Diseases.

G. Special requirements for reusable containers.

Regulated medical waste may be conveyed in reusable carts or containers under the following conditions:

1. The waste in the cart or container is packaged fully in accordance with subsections B through E of this section. Discrete units of waste and the cart or container must be properly labeled in accordance with subsection C of this section.

2. Immediately following each time a reusable cart or container is emptied and prior to being reused it is thoroughly cleaned, rinsed and effectively disinfected with a hospital grade disinfectant effective against mycobacteria. The area where carts or containers are cleaned, rinsed or disinfected is a storage area and regulated under Part V of these regulations.

3. Unloading of reusable carts or containers that contain regulated medical waste should be accomplished by mechanical means and not require handling of bags or packages by humans.

4. When reusable carts or containers containing regulated medical waste are used for off-site transport, all aspects of the cart or container management shall comply with § 6.11 of these regulations.

§ 4.4. Management of spills of ~~infectious waste~~ *regulated medical waste .*

A. Spill containment and cleanup kit.

All i~~nfectious waste~~ *regulated medical waste* management facilities are required to keep a spill containment and cleanup kit within the vicinity of any area where ~~infectious waste~~ *regulated medical wastes* are managed, and the location of the kit shall provide for rapid and efficient cleanup of spills anywhere within the area. All vehicles transporting ~~infectious waste~~ *regulated medical wastes* are required to carry a spill containment and cleanup kit in the vehicle whenever ~~infectious waste~~ *regulated medical wastes* are conveyed. The kit shall consist of at least the following items:

1. Material designed to absorb spilled liquids. The amount of absorbent material shall be that having a ~~rated~~ capacity , *as rated by the manufacturer, of* one gallon of liquid for every cubic foot of ~~infectious waste~~ *regulated medical waste* that is normally managed in the area for which the kit is provided or 10 gallons, whichever is less.

2. One gallon of ~~hospital grade~~ disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream at a distance. The disinfectant ~~should~~ *shall* be hospital grade and effective against mycobacteria.

3. Enough red plastic bags to double enclose 150% of the maximum load accumulated or transported *(up to a maximum of 500 bags)* , that meet the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and are accompanied by sealing tape (or devices) and labels (or tags). These bags shall be large enough to overpack any box or other container normally used for ~~infectious waste~~ *regulated medical waste* management by that facility.

4. Two new sets of liquid impermeable and disposable overalls, gloves, boots, caps and protective breathing devices. Overalls, boots and caps shall be oversized or fitted to ~~infectious waste~~ *regulated medical waste* workers ~~and be made of materials impermeable to liquids~~ . Boots may be of thick rubber and gloves shall be of heavy neoprene or equivalent ~~(these items~~ . Boots, gloves and breathing devices may be reused if fully disinfected between uses ~~)~~ . ~~Protection~~ *Protective* breathing devices shall be approved for filtering particulates and mists; usually, disposable surgical masks will suffice. Tape for sealing *openings at* wrists and ankles shall also be in the kit.

5. A first aid kit, fire extinguisher, boundary marking tape, lights and other appropriate safety equipment.

B. Containment and cleanup procedures.

Following a spill of ~~infectious waste~~ *regulated medical waste* or its discovery, the following procedures shall be implemented:

1. Leave the area until the aerosol settles (no more than a few minutes delay).

2. The cleanup crew will don the cleanup outfits described in § 4.4 A 4 and secure the spill area.

3. Spray the broken containers of ~~infectious waste~~ *regulated medical waste* with disinfectant.

4. Place broken containers and spillage inside overpack bags in the kit, minimizing exposure.

5. Disinfect the area and take other cleanup steps deemed appropriate.

6. Clean and disinfect nondisposable items.

7. Clean and disinfect cleanup outfits before removing.

8. Remove cleanup outfits and place disposable items in cleanup bag.

9. Take necessary steps to replenish containment and cleanup kit with items used.

C. When a spill involves only a single container of *regulated medical* waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the cleanup may elect to use alternate appropriate dress and procedures than those described in §§ 4.4 A and 4.4 B. Such alternate dress or procedures shall provide ~~an equal~~ protection of the health of workers and the public *equivalent to that described in this section* .

§ 4.5. Closure requirements.

When a ~~facility~~ *unit* that has been used for ~~infectious waste~~ *regulated medical waste* management is to cease operations involving ~~infectious waste~~ *regulated medical wastes* , it shall be thoroughly cleaned and disinfected. All *regulated medical* waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. ~~(NOTE: The department maintains other regulations that define requirements for the closure of solid waste management facilities, these regulations shall be reviewed and complied with in the closure of infectious waste management facilities.)~~

§ 4.6. Methods of treatment and disposal.

A. All ~~infectious waste~~ *regulated medical waste* shall be ~~either~~ incinerated ~~or~~ , sterilized by steam , *treated by an alternative treatment method as described in Part IX of these regulations, or treated by an innovative technology authorized by the director (see § 2.7)* . ~~Gas sterilization, thermal inactivation, irradiation and chemical treatment will not be approved except under special approval of the executive director as experimental facilities. (NOTE: Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This section and these regulations, as a whole, apply only to wastes, and they do not include the sterilization or disinfection of items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they are wastes and subject to regulation at that time and must be sterilized by steam or incinerated if contaminated.)~~

B. No ~~infectious waste~~ *regulated medical waste* shall be disposed of in a solid waste landfill or other solid waste management facility. Upon ~~incineration or steam incineration~~ *authorized treatment* in accord with these regulations, the *solid* waste or its ash is not ~~infectious waste~~ *regulated medical waste* and may be disposed of at

any landfill or other solid waste management facility permitted to receive putrescible *solid* waste or garbage , *provided the disposal is in accordance with the Solid Waste Management Regulations, VR 672-20-10, and other applicable regulations and standards* .

C. All pathological ~~waste~~ *regulated medical waste that is primarily bulk liquid* shall be incinerated; other disposal methods are not acceptable for this type of *regulated medical* waste. However, this requirement does not prohibit the disposal, without storage and with or without grinding, of wastes, including blood and body fluids, in a sanitary sewer system.

D. ~~Infectious waste~~ *Regulated medical waste in closed bags or containers* shall not be compacted or subjected to violent mechanical stress; however, after it is fully ~~sterilized~~ *treated* and it is no longer ~~infectious waste~~ *regulated medical waste* , it may be compacted in a closed container. Nothing in this section shall prevent the puncturing of containers or packaging immediately prior to steam sterilization so that steam may penetrate into the *solid* waste mass, provided the puncturing is performed in a safe and sanitary method. *Devices that grind, shred, compact or reduce the volume of regulated medical waste may be employed at the point of generation and prior to enclosing the regulated medical waste in plastic bags and other required packaging; however, the solid waste remains regulated medical waste.*

§ ~~4.7. Approved test method.~~

~~The following test methods shall be used for analysis or determinations under these regulations:~~

~~A. "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," Publication SW-846, U.S. Environmental Protection Agency (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401, (202) 783-3238).~~

~~B. "Guideline for Handwashing and Hospital Environmental Control," U.S. Center for Disease Control, Atlanta, Georgia.~~

§ ~~4.8.~~ *§ 4.7.* Recordkeeping requirements.

A. All generators and *regulated medical* waste management facilities that manage ~~infectious waste~~ *regulated medical waste* shall maintain the following records and assure that they are accurate and current:

1. A list of the members of ~~the~~ *any* ad hoc committee for the management of infection control for the facility, their address, their phone numbers and the period of their membership.

2. The date, persons involved and short description of events in each spill of ~~infectious waste~~ *regulated medical wastes* involving more than 32 gallons of *regulated medical* waste or one quart of free liquid.

3. A notebook or file containing the adopted policies and procedures of the ~~facilities~~ *facility* for dealing with ~~infectious waste~~ *regulated medical wastes* .

4. A log of all special training received by persons involved in ~~infectious waste~~ *regulated medical waste* management.

5. A log of ~~infectious waste~~ *regulated medical waste* received from off-site, the generator, the amount and its generation and receipt dates. Records shall be maintained for a period of three years and be available for review.

B. All solid waste management facilities that manage regulated medical waste shall maintain the following records and assure that they are accurate and current:

1. For each load received, a signed certificate for each load received in which the generator affirms that the load does not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in subdivision 3 of this subsection.

2. A signed and effective contract, inclusive of all loads received from a generator, in which the generator affirms that all loads do not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in subdivision 3 of this subsection.

3. The United States Nuclear Regulatory Commission (USNRC) has established regulations under Title 10 of the Code of Federal Regulations for the management of radioactive materials. The Virginia Department of Health has established other requirements in accordance with Title 32.1 of the Code of Virginia. No regulated medical waste containing radioactive materials, regardless of amount or origin, shall be treated unless its management and treatment are in full compliance with these two bodies of regulations and are deemed by both regulations not to represent a threat to public health and the environment.

§ 4.8. Operator training requirements.

(Reserved.)

§ 4.9. Quarterly reporting by facilities.

Operators of regulated medical waste management facilities that receive regulated medical waste from off-site shall file a written report of regulated medical waste amounts received during the preceding quarter on the 10th business day of January, April, July, and October of each year. The report shall contain:

1. The name, mailing address, physical location, and telephone number of the firm;

2. The name and signature of the person preparing the report;

3. Each city, county, and town (including the state) from which regulated medical waste was received during the quarter and the total amount (in tons) received from each point of origin; and

4. Each city, county, and town (including the state) to which regulated medical waste was shipped during the quarter and the total amount (in tons) sent to each point of destination.

PART V.
SPECIAL REQUIREMENTS FOR STORAGE FACILITIES.

§ 5.1. Application of Part V.

The requirements of this part apply only to areas of storage where more than 64 gallons of *regulated medical* waste are accumulated . ~~The requirements of this part apply to~~ *including* storage of ~~infectious waste~~ *regulated medical waste* during transportation and at incinerator, steam sterilization and other treatment and disposal facilities.

§ 5.2. Sanitation.

All areas used to store ~~infectious waste~~ *regulated medical waste* shall be clean and impermeable to liquids. Carpets and floor coverings with seams shall not be used in storage area. ~~Vermin and insects~~ *Vectors* shall be controlled.

§ 5.3. Access.

All areas used to store ~~infectious waste~~ *regulated medical waste* shall have access control that limits access to those persons specifically designated to manage ~~infectious waste~~ *regulated medical waste* .

§ 5.4. Temperature control and storage period.

Any ~~infectious waste~~ *regulated medical waste that is more than seven days past its date of generation and is* stored ~~for more than 72 hours after generation~~ shall be refrigerated, stored in an ambient temperature between 35°F and 45°F (2°C and 7°C). ~~No infectious waste shall be stored for more than seven consecutive days after its generation, unless it is frozen within 72 hours of its generation and maintained frozen during the entire remaining period of storage.~~ No ~~infectious waste~~ *regulated medical waste* shall be stored for more than 30 days ~~, even if frozen~~ .

§ 5.5. Drainage and ventilation.

All floor drains shall discharge directly to an approved sanitary sewer system. All ventilation shall discharge so as to minimize human exposure to the effluent. *All transfers of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste.*

§ 5.6. Facilities for management of reusable carts or containers.

Waste managed in reusable carts or containers shall meet the following requirements:

1. The regulated medical waste in the cart or container shall be packaged fully in accordance with subsections B through E of § 4.3. Discrete units of regulated medical waste and the cart or container must be properly labeled.

2. Immediately following each time a reusable cart or container is emptied and prior to being reused it shall be thoroughly cleaned, rinsed and effectively disinfected with a hospital grade disinfectant. The disinfectant must be used in accord with manufacturer's direction and effective against mycobacteria.

3. Unloading of reusable carts or containers that contain regulated medical waste not contained in nonreusable rigid containers should be accomplished by mechanical means and not require handling of packages by humans.

4. The area where cleaning, rinsing, and disinfecting occurs is a storage area and shall comply with all other sections of Part V.

§ 5.7. Container management.

Persons loading, unloading, or handling containers of regulated medical waste shall wear clean, heavy neoprene (or equivalent) gloves and clean overalls.

PART VI.
SPECIAL REQUIREMENTS FOR TRANSPORTATION.

§ 6.1. Application of Part VI.

The requirements of this part apply to all transportation of ~~infectious waste over roads or highways, by railroad or by water conveyance. It specifically includes all motor vehicle transportation~~ *regulated medical waste* .

§ 6.2. Sanitation.

~~Areas~~ *Surfaces* of equipment used to transport ~~infectious waste~~ *regulated medical waste* must be clean and impermeable to liquids, if those areas are involved with the management of the waste. Carpets and floor coverings with seams shall not be used. ~~Vermin and insects~~ *Vectors* shall be controlled. All trucks and equipment used to transport ~~infectious waste~~ *regulated medical waste* shall be

thoroughly cleaned and disinfected before being used for any other purpose, at the end of each business day or 24-hour period of use and prior to any transfer of ownership.

§ 6.3. Access.

All vehicles, equipment and service or parking areas used in the transportation of ~~infectious waste,~~ *regulated medical waste* shall have access control that limits access to those persons specifically designated to manage ~~infectious waste~~ *regulated medical waste* .

§ 6.4. Temperature control and storage period.

Any ~~infectious waste~~ *regulated medical waste that is more than seven days past its date of generation and is* transported ~~more than 72 hours after generation~~ shall be refrigerated, maintained in an ambient temperature between 35°F and 45°F (2°C and 5°C), during transport and during any storage following transport. ~~No infectious waste shall be stored for more than seven consecutive days after its generation, unless it is frozen within 72 hours of the time of its generation and maintained frozen during the entire remaining period of storage.~~ No ~~infectious waste~~ *regulated medical waste* shall be stored for more than 30 days ~~, even if frozen~~ . Time in transport shall be accounted as time in storage.

§ 6.5. Drainage.

All drainage shall discharge directly or through a holding tank to ~~a permitted~~ *an approved* sanitary sewer system. *All transfers of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste.*

§ 6.6. Packaging, labeling and placards.

A. No person shall transport or receive for transport any ~~infectious waste~~ *regulated medical waste* that is not packaged and labeled in accord with § 4.3 of these regulations.

B. The access doors to any area holding ~~infectious waste~~ *regulated medical waste* in transport shall have a warning sign in bold and large letters that indicates the cargo is ~~infectious waste~~ *regulated medical waste* .

C. Transportation vehicles shall bear placards depicting the international symbol for biologically hazardous materials *(see § 4.3 C)* . Placards shall conform to standards of the *United States* Department of Transportation specified in *(1993)* 49 CFR 172 Subpart F regarding size, placement, color and detail.

§ 6.7. Management of spills of ~~infectious waste~~ *regulated medical waste* .

A. Spill containment and cleanup kit.

All vehicles transporting ~~infectious waste~~ *regulated medical wastes* are required to carry a spill containment and cleanup kit in the vehicle whenever ~~infectious wastes~~ *regulated medical wastes* are conveyed. The kit shall consist of at least the following items:

1. Material designed to absorb spilled liquids. The amount of absorbent material shall be rated *by the manufacturer as having a capacity* to absorb 10 gallons.

2. One gallon of ~~hospital grade~~ disinfectant in a sprayer capable of dispersing its charge in a mist and in a stream at a distance. The disinfectant ~~should~~ *shall* be hospital grade and effective against mycobacteria.

3. Enough red plastic bags to double enclose 150% of the ~~minimum~~ *maximum* load accumulated or transported that meet the ASTM 125 pound ~~drop weight test~~ *Drop Test for Filled Bags (D959)* and are accompanied by seals and labels. These bags shall be large enough to overpack any box or other container normally used for ~~infectious waste~~ *regulated medical waste* management.

4. Two new sets of ~~impermeable and~~ disposable overalls, gloves, boots, caps and breathing protective devices. Overalls, boots and caps shall be oversized or fitted to ~~infectious waste~~ *regulated medical waste* workers and be made of materials impermeable to liquids. Boots may be of thick rubber and gloves shall be of heavy neoprene or equivalent ~~(these items~~ . Boots, gloves and breathing devices may be reused if fully disinfected between uses ~~)~~ . ~~Protection~~ *Protective* breathing devices shall be approved for filtering particulates and mists; disposable surgical masks will suffice. Tape for sealing *openings at* wrists and ankles shall also be in the kit.

5. A first aid kit, fire extinguisher, boundary marking tape, lights and other appropriate safety equipment.

B. Containment and clean up procedures.

Following a spill of ~~infectious waste~~ *regulated medical waste* or its discovery, the following procedures shall be implemented:

1. Leave the area until the aerosol settles (no more than a few minutes delay).

2. The cleanup crew will don the cleanup outfits described in § 6.7 A 4 and secure the spill area.

3. Spray the broken containers of ~~infectious waste~~ *regulated medical waste* with disinfectant.

4. Place broken containers and spillage inside the

overpack bags in the kit, minimizing exposure.

5. Disinfect the area and take other cleanup steps deemed appropriate.

6. Clean and disinfect cleanup outfits before removing.

7. Clean and disinfect nondisposable items.

8. Remove cleanup outfits and place disposal items in cleanup bag.

9. Take necessary steps to replenish containment and cleanup kit with items used.

C. When a spill involves only a single container of *regulated medical* waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the cleanup may elect to use alternate appropriate dress and procedures. Such alternate dress or procedures shall provide ~~an equal~~ protection of the health of workers and the public *equivalent to that described in subsections A and B of this section* .

§ 6.8. Loading and unloading.

Persons loading and unloading transportation vehicles with ~~infectious waste~~ *regulated medical waste* shall wear ~~disinfected~~ *clean* , heavy neoprene (or equivalent) gloves and clean coveralls.

§ 6.9. Registration of transporters.

A. At least 30 days prior to transporting any ~~infectious waste~~ *regulated medical waste* within the Commonwealth, all transporters shall register with the Department of ~~Waste Management~~ *Environmental Quality* . Registration shall consist *of* filing the data specified in § 6.9 B in written form, and the department will issue a registration number to the transporter. No ~~infectious waste~~ *regulated medical waste* shall be transported until the registration number is issued. Transporters shall notify the generator of the waste of his registration number when he collects the waste.

B. Data to be submitted by persons wishing to register as transporters of ~~infectious waste~~ *regulated medical waste* shall be as follows:

1. Name of the person or firm.

2. Business address and telephone number of person or firm. Include headquarters and local office.

3. Make, model and license number of each vehicle to be used to transport ~~infectious waste~~ *regulated medical waste* within the Commonwealth.

4. Name, business address and telephone number of each driver who will operate in the Commonwealth.

5. Areas (counties and cities) of the Commonwealth in which the transporter will operate.

6. a. Any person or firm other than reported in § 6.9 B 1 that is associated with the registering firm or any other name under which that person or firm does business.

b. Any other person or firm using any of the same vehicles and operators.

7. The name and phone number of a person who may be contacted in the event of an accident or release.

C. Within 30 days following the change of any data in § 6.9 B, the ~~transport~~ *transporter* shall notify the department of that change. Failure to notify the department nullifies the registration and invalidates the registration number.

D. Use of a false or invalid registration number is prohibited. (NOTE: All filing of data, request for registration number and issuance of a registration number shall be in writing.)

§ 6.10. Transport by mail, parcel post or courier service.

Transport of regulated medical waste by the United States Postal Services that fully complies with Part 111, (1993) 39 CFR, shall be considered to be transportation by a registered transporter and in compliance with these regulations if:

1. The generator maintains a complete and legible copy of the manifest or mail disposal services shipping record for a period of three years. (Note: Disposer's certification and other tracking items must be completed and shown on the copy.)

2. The addressee is a facility permitted by the appropriate agencies of the Commonwealth of Virginia or the host state.

3. No package may be more than 32 gallons in volume.

§ 6.11. Transport using reusable carts or containers.

A. No reusable carts or containers that have been used to manage regulated medical waste may be transported unless they have been cleaned, rinsed and disinfected in a storage facility permitted under these regulations and in compliance with Part V of these regulations.

B. Reusable carts or containers used to transport regulated medical waste must be sealed, highly puncture resistant, and highly leak resistant. They shall conform in all respects to 49CFR172 through 49CFR178 for containers and transport of regulated medical waste.

PART VII.
SPECIAL REQUIREMENTS FOR INCINERATION.

§ 7.1. Application of Part VII.

The requirements of this part apply to all facilities that incinerate ~~infectious waste~~ *regulated medical waste* .

§ 7.2. Performance standards.

All incinerators for ~~infectious waste~~ *regulated medical waste* shall maintain the following level of operational performance at all times:

~~A.~~ *1.* Operational temperature and retention time. Whenever ~~infectious waste~~ *regulated medical wastes* are introduced into an incinerator, all the *regulated medical* waste shall be subjected to a burn temperature of not less than 1400°F (760°C) for a period not less than one hour. *For all incinerators,* gases generated by the combustion shall be subjected to a temperature of not less than 1800°F (982°C) for a period of one second or more. *For certain incinerators, gases generated by the combustion shall be subjected to a temperature of not less than 2000°F (1094°C) for a period of two seconds or more under separate requirements of the State Air Pollution Control Board.* Except at start-up interlocks or other process control devices shall prevent feeding of the incinerator unless these conditions can be achieved.

~~B.~~ *2.* Loading and operating controls. The incinerator shall have interlocks or other process control devices to prevent feeding of the incinerator until the conditions in § 7.2 A can be achieved. Such devices may have an override for start-up. In the event low temperatures occur, facilities shall have automatic auxiliary burners which are capable, excluding the heat content of the wastes, of independently maintaining the secondary chamber temperature at the minimum of 1800°F.

~~C.~~ *3.* Monitoring. There shall be continuous monitoring and recording of primary and secondary chamber temperatures. Monitoring data shall be maintained for a period of three years.

~~D.~~ *4.* Waste destruction efficiency. All combustible *solid* waste shall be converted by the incineration process into ash that is not recognizable as to its former character.

~~E.~~ *5.* The incinerator shall be permitted by the ~~Department of Air Pollution Control~~ *State Air Pollution Control Board* and be in compliance with the regulations of that agency.

§ 7.3. Analysis and management of the ash product.

A. Procedure.

Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the *bottom* ash shall be collected from the ash discharge or the ash discharge conveyer. Samples collected during 1000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a *solid* waste is a hazardous waste. Also, the sample shall be tested for total organic carbon content.

At incinerators equipped with air pollution control devices that remove and collect incinerator emissions control ash or dust, this ash shall be held separately and not mixed with bottom ash. Once every eight hours of operation of a continuously fed incinerator and once every batch or 24 hours of operation of a batch fed incinerator, a representative sample of 250 milliliters of the air pollution control ash or dust shall be collected from the pollution control ash discharge. Air pollution control ash or dust samples collected during 1000 hours of operation or quarterly, whichever is more often, shall be thoroughly mixed and seven random portions of equal volume shall be composited into one sample for laboratory analysis. This sample shall be tested in accord with the methods established by the Virginia Hazardous Waste Management Regulations for determining if a waste is a hazardous waste.

B. Results and records.

A log shall document the ash sampling, to include the date and time of each sample collected; the date, time and identification number of each composite sample; and the results of the analyses, including laboratory identification. Results of analyses shall be returned from the laboratory and recorded within four weeks following collection of the composite sample. The results and records described in this part shall be maintained for a period of three years, and shall be available for review.

C. Disposition of ash.

If a waste ash is found to be hazardous waste (based on a sample and a confirmation sample) the waste *ash* shall be disposed of as a hazardous waste in accord with the Virginia Hazardous Waste Management Regulations. If ash is found not to be hazardous waste by analysis, it may be disposed of in a solid waste landfill that is permitted ~~by the department~~ to ~~accept~~ *receive* garbage, putrescible waste or incinerator ash , *provided the disposal is in accordance with the Solid Waste Management Regulation, VR 672-20-10* . If the ash is found to be hazardous *waste* , the operator shall notify the ~~executive~~ director of the Department of ~~Waste Management~~ *Environmental Quality* within 24 hours ; ~~the incinerator unit shall cease operation and shall not operate until the operator has received the written approval of the executive director to continue~~ . No later than 15 days following, the permittee shall submit a plan for treating and disposing of the waste on hand at

the facility and all unsatisfactorily treated waste that has left the facility. The permittee may include with the plan a ~~petition to restart operation of the facility that describes~~ *description of* the corrective actions to be taken to prevent further unsatisfactory performance. ~~The executive director will notify the petitioner within 15 days of receipt of the petition of the decision rendered.~~ *No ash subsequently generated from the incinerator waste stream that was found to be hazardous waste shall be sent to a nonhazardous solid waste management facility in the Commonwealth without the express written approval of the director.*

~~D. Reduction or elimination of ash.~~

~~At any time two years following the effective date of these regulations, the executive director may reduce or eliminate any of the requirements for testing of the ash, provided the reduction or elimination is not believed to represent a threat to the public health or the environment. The reduction or elimination shall be issued in the same manner as a variance as set out in Part X.~~

D. Ash storage.

Air pollution control ash and bottom ash shall be held separately and not mixed. Throughout the storage of the ash it shall be kept in covered highly leak resistant containers. It should be held until the generator determines the ash waste to not be hazardous waste. Areas where ash containers are placed must be constructed with a berm or prevent runoff from that area.

E. Solid waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility.

§ 7.4. Compliance with other parts of these regulations.

In general, incinerator facilities shall comply with all other parts of these regulation. The site of the incinerator facility is a storage facility and shall comply with Part V of these regulations. *Management of* Spills or the opening in an emergency of any ~~infectious waste~~ *regulated medical waste* package, shall comply with § 4.4 of these regulations.

§ 7.5. Unloading operations.

Persons ~~required to handle packages of~~ *loading and unloading transportation vehicles with regulated medical* waste shall wear ~~freshly laundered or new overalls and heavy neoprene, or equivalent, gloves~~ *clean, heavy neoprene gloves (or equivalent) and clean overalls* .

PART VIII.
SPECIAL REQUIREMENTS FOR STEAM STERILIZATION.

§ 8.1. Application of Part VIII.

The requirements of this part apply to all steam sterilizers (autoclaves) that sterilize ~~infectious waste~~ *regulated medical waste* .

§ 8.2. Performance standards.

All sterilizers for ~~infectious waste~~ *regulated medical waste* shall maintain the following level of operational performance at all times:

~~A.~~ *1.* Operational temperature and detention. Whenever ~~infectious waste~~ *regulated medical wastes* are treated in a steam sterilizer, all the *regulated medical* waste shall be subjected to the following operational standards:

~~1.~~ *a.* Temperature of not less than 250°F for 90 minutes at 15 pounds per square inch of gauge pressure,

~~2.~~ *b.* Temperatures of not less than 272°F for 45 minutes at 27 pounds per square inch of gauge pressure,

~~3.~~ *c.* Temperature of not less than 250°F for 28 minutes at 80 pounds per square inch of gauge pressure, or

~~4.~~ *d.* Temperatures of not less than 270°F for 16 minutes at 80 pounds per square inch of gauge pressure.

~~Other~~ *Equivalent* combinations of operational temperatures, pressure and time may be approved by the ~~department~~ *director* if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in *regulated medical* waste at design capacity. *Written requests for approval of an equivalent standard shall be submitted to the director.* Complete and thorough testing shall be fully documented, including tests of the capacity to kill B stearothermophilus. Longer steam sterilization times are required when a load contains a large quantity of liquid.

~~B.~~ *2.* Operational controls and records.

~~1.~~ *a.* Each package of *regulated medical* waste to be sterilized shall have a tape attached that will indicate if the steam sterilization temperature has been reached and *regulated medical* waste will not be considered satisfactorily sterilized if the indicator fails to indicate that temperature was reached during the process.

~~2.~~ *b.* Steam sterilization units shall be evaluated under full loading for effectiveness with spores of B stearothermophilus no less than once per month.

~~3.~~ *c.* A log shall be kept at each steam sterilization unit that is complete for the proceeding three-year period. The log shall record the date, time and operator of each usage; the type and approximate amount of *regulated medical* waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effective testing described in § 8.2 B 2. Where multiple steam sterilization units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs shall be retained for three years and be available for review.

~~4. Infectious waste~~ *d. Regulated medical waste* shall not be compacted or subjected to violent mechanical stress before steam sterilization; however, after it is fully sterilized it may be compacted in a closed container.

e. Regulated medical waste shall be ground or shredded into particles that are no larger than 0.50 inches in any dimension. Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automatic and conducted by enclosed mechanical equipment.

§ 8.3. Disposal of treated wastes.

A. Solid waste that has been steam sterilized in compliance with these regulations is no longer regulated medical waste and is solid waste. Steam sterilized solid waste may be compacted.

B. All solid waste that has been steam sterilized shall be placed in opaque plastic bags and sealed. The bags may not be red or orange in color. Where bulk sterilization is used and the solid waste is compacted and immediately placed in closed bulk solid waste management containers, which are more than 64 gallons in volume, the repackaging of the solid waste in bags is not required.

C. Each bag of steam sterilized solid waste or bulk solid waste container must bear an easily read label, placard, or tag with the following words, "This solid waste has been properly treated in accord with the Virginia Regulated Medical Waste Management Regulations and is not regulated medical waste."

D. Regulated medical waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility.

§ ~~8.3.~~ *§ 8.4.* Compliance with other parts of these regulations.

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and shall comply with Part V of these regulations. *Management of* spills or the opening in an emergency of any ~~infectious waste~~ *regulated medical waste* package, shall comply with § 4.4 of these regulations.

PART IX.
SPECIAL REQUIREMENTS FOR ALTERNATIVE TREATMENT.

§ 9.1. Application of Part IX.

The requirements of this part apply to all alternative treatment methods that treat regulated medical waste.

§ 9.2. Performance standards.

A. All alternative treatment facilities for regulated medical waste shall maintain the level of operational performance as described in this section at all times.

B. The following requirements apply to all alternative treatment facilities.

1. Regulated medical waste shall be grounded or shredded into particles that are no larger than 0.50 inches in any dimension. Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automated and conducted by enclosed mechanical equipment.

2. Alternative treatment units shall be evaluated under full loading for effectiveness with spores of B. stearothermophilus no less than once per month.

3. A log shall be kept at each alternative treatment unit that is complete for the preceding three-year period. The log shall record the date, time and operator; the type and approximate amount of solid waste treated; and the dates and results of calibration and testing. Where multiple alternative treatment units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs and all performance parameter recordings shall be retained for three years and be available for review.

4. Regulated medical waste shall not be compacted or subjected to violent mechanical stress before treatment. After it is fully treated it may be compacted in a closed container.

5. All process units for the preparation or treatment of regulated medical waste shall be in closed vessels under a negative pressure atmospheric control that

filters all vents, discharges, and fugitive emissions of air from the process units through a high efficiency particulate air (HEPA) filter with an efficiency of 99.97% for 0.03 microns.

B. Facilities shall comply with the following treatment requirements for the specific technology employed.

1. Dry heat treatment.

a. Any treatment unit employing dry heat as the main treatment process shall subject all the regulated medical waste to:

(1) A temperature of no less than 480°F for no less than 30 minutes,

(2) A temperature of no less than 390°F for no less than 38 minutes, or

(3) A temperature of no less than 355°F for no less than 60 minutes.

b. No treatment unit employing dry heat as the main treatment process shall have a treatment chamber capacity greater than 1.0 cubic feet in volume.

c. Each treatment unit shall be equipped to sense, display and continiously record the temperature of the treatment chamber.

2. Microwave treatment.

a. Any treatment unit employing microwave radiation as the main treatment process shall subject all the solid waste to a temperature of no less than 203°F for no less than 25 minutes.

b. Microwave radiation power of the treatment process shall be at least six units each having a power of 1,200 watts or the equivalent power output.

c. Each microwave treatment unit shall be equipped to sense, display and continuously record the temperature at the start, middle and end of the treatment chamber.

3. Chlorination.

a. Any treatment unit employing chlorination as the main treatment process shall subject all the solid waste to a solution whose initial fee residual chlorine concentration is not less than 3,000 milligrams per liter for no less than 25 minutes.

b. The free chlorine residual of the solid waste slurry after treatment shall be maintained at 200 milligrams per liter. The treated solid waste stream shall be equipped to continuously analyze, display, and record free chlorine residual concentration.

4. Other alternative treatment technologies. All alternative treatment technologies approved by the director under § 2.7 C of these regulations shall conform to the requirements of this part and any additional requirements the director shall impose at the time of approval.

§ 9.3. Disposal of treated wastes.

A. Regulated medical waste that has been treated by an alternate treatment technique in compliance with these regulations is no longer regulated medical waste and is solid waste. Treated solid waste may be compacted.

B. All regulated medical waste that has been treated shall be placed in opaque plastic bags and sealed. The bags may not be red or orange in color. Where bulk treatment is used and the solid waste is compacted and immediately placed in closed bulk solid waste management containers, which are more than 64 gallons in volume, the repacking of the treated solid waste in bags is not required.

C. Each bag of treated solid waste or bulk solid waste container must bear an easily read label, placard, or tag with the following words, "This solid waste has been properly treated in accord with Virginia Regulated Medical Waste Management Regulations and is not regulated medical waste."

D. Regulated medical waste treated in compliance with Part VII, VIII or IX shall be deemed to be treated in accordance with these regulations. Regulated medical waste not treated in accordance with these regulations shall not be transported, received for transport or disposal, or disposed of in any solid waste management facility.

§ 9.4. Compliance with other parts of these regulations.

In general, alternative treatment facilities shall comply with all other parts of these regulations. The site of the treatment facility is a storage facility and must comply with Part V of these regulations. Management of spills or the opening in an emergency of any regulated medical waste package, shall comply with § 4.4 of these regulations.

PART ~~IX~~ *X*.
PERMIT APPLICATION AND ISSUANCE PROCEDURES.

§ ~~9.1.~~ *§ 10.1.* Scope of Part ~~IX~~ *X*.

This part of the regulations ~~requires~~ *describes procedures for obtaining* a permit for the treatment *,* ~~or~~ storage ~~or disposal~~ of ~~any infectious waste~~ *regulated medical waste* unless specifically excluded by these regulations or under a permit by rule as defined in § 4.1

of these regulations. Owners and operators of ~~infectious waste~~ *regulated medical waste* management units shall have permits during the active life (including the closure periods) of the unit. The ~~executive~~ director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.

§ 10.2. Application for permit.

The Solid Waste Management Regulations, VR 672-20-10, contain detailed requirements for the siting, design, construction and operation of solid waste management facilities. All facilities for the management of regulated medical waste not permitted under Part IV, permit by rule, shall be permitted as a solid waste management facility in accordance with VR 672-20-10. The following designations shall apply:

1. Storage facilities. Permit application and review of any storage facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste transfer station under VR 672-20-10.

2. Incineration facilities. Permit application and review of any incinerator facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste energy recovery and incinerator facility under VR 672-20-10.

3. Steam sterilization and other nonincineration treatment facilities. Permit application and review of any steam sterilization or other nonincineration treatment facility for the management of regulated medical waste shall comply with all applicable requirements and procedures for a solid waste energy recovery and incinerator facility under VR 672-20-10.

§ 10.3. Contents of the application.

Procedures for the submission of applications and the review of applications for facilities for the management of regulated medical waste shall be identical to those for solid waste permit applications specified in VR 672-20-10. The content of the permit applications will comply with VR 672-20-10 and describe how the proposed facility will fully comply with these Regulated Medical Waste Management Regulations. Any certification submitted in fulfillment of permitting requirements of VR 672-20-10 shall incorporate total compliance with the requirements of these regulations, Regulated Medical Waste Regulations, when the application is for a facility to manage regulated medical waste. All operational plans submitted for the permitting of regulated medical waste facilities shall specifically describe how wastes received by the facilities will be screened as they arrive to prevent management of solid waste that are inappropriate or prohibited at the facilities.

§ 10.4. Duration of permits.

A. Any permit for the management of regulated medical waste shall expire after 10 years of operation. Permits shall not be extended beyond the 10-year permit by permit transfer or modifications. At any time more than 180 days prior to the expiration of the permit and no more than 480 days prior to the expiration of the permit, the holder of a valid permit may request that the director renew the permit and submit all information known to permit holder that is changed or new since the original permit application and which has not been previously submitted to the director. A permit may be renewed for a period of 10 years of operation. Processing of the request will be in accordance with subsections B and C of this section.

B. If the holder of a valid permit for a regulated medical waste management facility files with the director a request to renew the permit at least 180 days prior to the expiration of that permit, the director will cause an audit to be conducted of the facility's past operation, its current condition and the records held by the department concerning the facility. Within 60 days of receipt of a proper request, the director will report to the applicant the findings of the audit and those items of correction or information required before renewal will be considered. The director shall review the environmental compliance history of the permittee, material changes in key personnel, and technical limitations, standards, or regulations on which the original permit was based. If the director finds repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interest of human health or the environment, the director shall deny the request for renewal of the permit. If the director finds the facilities to be insufficient to comply with regulations in effect at the time of the proposed renewal, the director shall deny the request for renewal. The director shall request any information from the permittee that is necessary to conduct the audit, and that is reasonably available to the permittee and substantive to the proposed renewal.

C. If the applicant files for renewal less than 180 days prior to the expiration of the original permit or files an improper application the director shall deny the application for renewal. If an application for renewal has been denied for a facility, any further applications and submittals shall be identical to those for a new facility.

§ 10.5. Existing facilities qualifications.

Owners and operators of existing and permitted regulated medical waste management facilities are not required to submit an application for a new permit at the time these amended regulations become effective. Existing permits will remain valid, except that conditions or waivers in existing permits that conflict with these amended regulations are void on the date six months from the effective date of these amended regulations.

Operators of existing facilities are required to comply with these amended regulations within six months following their effective date and may comply at any time with any item contained in these regulations in lieu of a conflicting condition contained in an existing permit.

§ 10.6. Permitting administrative procedures.

Administration and procedures related to permit applications and permit administration for regulated medical waste facilities shall be those requirements for other solid waste management facilities contained in the Virginia Solid Waste Management Regulations, VR 672-20-10, Part VII.

~~§ 9.2. Application for permit.~~

~~A. Permit application.~~

~~Any person who is required to have a permit, including new applicants and permittees with expiring permits, shall complete, sign, and submit an application to the executive director, including the form contained in the appendix. Persons covered by permits by rule need not apply, but must notify the department in accord with Part IV. Procedures for application, issuance and administration of emergency permits are found exclusively in § 9.7 A. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 9.7 D.~~

~~B. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit; however, the owner shall also sign the permit application.~~

~~C. Completeness of application.~~

~~1. The executive director shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit contained in § 9.3 and the signature requirements of § 9.6.~~

~~2. The executive director shall not issue a permit before receiving a complete application except permits by rule or emergency permits. An application for a permit is complete when the executive director receives an application form and any supplemental information which are completed to his satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.~~

~~3. All applicants for infectious waste management permits shall provide information set forth in § 9.3 and applicable portions of § 9.4 to the executive director.~~

~~D. Existing facilities qualifications.~~

~~Owners and operators of existing and permitted regulated medical waste management facilities are not required to submit an application for a new permit at the time these regulations become effective. Existing permits will remain valid, except that conditions or waivers in existing permits in conflict with these regulations are void and operators of existing facilities are required to comply with these regulations.~~

~~E. New facilities.~~

~~No person shall begin physical construction of a new facility without having submitted the permit application and having received a final effective permit.~~

~~§ 9.3. Contents of the application.~~

~~The application shall include the following information:~~

~~1. The activities conducted by the applicant which require him to obtain a permit.~~

~~2. Name, mailing address, and location of the facility for which the application is submitted.~~

~~3. The latitude and longitude of the facility.~~

~~4. The name, address and telephone number of the owner or the facility.~~

~~5. An indication of whether the facility is new or existing.~~

~~6. For existing facilities, a scale drawing of the facility showing the location of all past, present, and future treatment, storage, and disposal areas.~~

~~7. For existing facilities, photographs of the facility clearly delineating all existing structures; existing treatment, storage, and disposal areas; and sites of future treatment, storage, and disposal areas.~~

~~8. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.~~

~~9. A listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the Commonwealth:~~

~~a. Hazardous waste management program under RCRA;~~

~~b. NPDES program under CWA;~~

~~c. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;~~

~~d. Nonattainment program under the Clean Air Act;~~

e. Other relevant environmental permits, including local permits.

10. A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its infectious waste treatment, storage, or disposal facilities; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the quarter-mile of the facility property boundary.

11. A brief description of the nature of the business.

12. A description of the processes to be used for treating, storing, transporting and disposing of infectious waste, and the design capacity of these items;

13. A description of the type of the infectious waste to be treated, stored, transported or disposed at the facility, an estimate of the quantity of such wastes to be treated, stored, transported or disposed annually;

14. A certification from the governing body of the city, county or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances (in accordance with § 10.1-1408.1 B of the Code of Virginia.)

§ 9.4. Detailed submittal.

The following information is required for all facilities; however, its submittal may be delayed pending a preliminary evaluation by the department of the concept of the application based on the information above.

A. Conceptual review.

The applicant may request in writing that the department perform a conceptual review. The evaluation of the concept is not a commitment on the part of the department to issue a permit, nor is it a commitment by the applicant to proceed with the permitting process.

B. Final review.

No final permit will be considered or issued until the following information is submitted and is complete. (NOTE: If owners and operators of facilities can demonstrate that the information prescribed cannot be provided to the extent required, the executive director may take allowance for submission of such information on a case by case basis.)

1. A description of procedures, structures, or equipment used at the facility to:

a. Prevent hazards in unloading operations.

b. Prevent run-off from infectious waste handling areas to other areas of the facility or environment.

c. Prevent contamination of water supplies.

d. Mitigate effects of equipment failure and power outages.

e. Prevent exposure of personnel to regulated medical waste.

2. Traffic pattern, estimated volume (number, types of vehicles) and control; described access road surfacing and load bearing capacity; show traffic control signals.

3. Owners and operators of all facilities shall provide an identification of whether the facility is located within a 100-year flood plain. This identification shall indicate the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where a FIA map is not available. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e.g., wave action) which shall be considered in designing, constructing, operating, or maintaining the facility to withstand washout from a 100-year flood.

4. An outline of both the introductory and continuing training programs by owners and operators to prepare persons to operate or maintain the facility in a safe manner as required. A brief description of how training will be designed to meet actual job tasks.

5. A copy of the closure plan.

6. Closure cost documentation. The most recent closure cost and post-closure cost estimates for the facility and a copy of the documentation required to demonstrate financial assurance under.

7. A topographic map showing a distance of 1,000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours shall be shown on the map. The contour interval shall be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet) or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

a. Map scale and date.

b. 100-year flood plain area.

c. Surface waters including intermittent streams.

d. Surrounding land uses (residential, commercial, agricultural, recreational).

e. A wind rose (i.e., prevailing wind speed and direction).

f. Orientation of the map (north arrow).

g. Legal boundaries of the facility site.

h. Access control (fences, gates).

i. Injection and withdrawal wells both on-site and off-site.

j. Buildings; treatment, storage, or disposal operations; or other structures (recreation areas, run-off control systems, access and internal roads, storm, sanitary, and process sewerage systems, loading and unloading areas, fire control facilities, etc.).

k. Barriers for drainage or flood control.

l. Location of operational units within the facility site, where infectious waste is (or will be) treated, stored, or disposed (including equipment cleanup areas).

m. Applicants may be required to submit such information as may be necessary to enable the executive director to carry out his duties as required.

8. From owners or operators of facilities that are used or to be used for storage or treatment, a description of the containment and refrigeration system.

9. For facilities that incinerate infectious waste.

a. An analysis of each waste or mixture of wastes to be burned.

b. Estimated heat value of the waste in the form and composition in which it will be burned.

c. A detailed engineering description of the incinerator, including:

(1) Manufacturer's name and model number of incinerator.

(2) Type of incinerator.

(3) Linear dimension of incinerator unit including cross sectional area of combustion chamber.

(4) Description of auxiliary fuel system (type/feed).

(5) Capacity of prime mover.

(6) Description of automatic waste feed cutoff system(s).

(7) Stack gas monitoring and pollution control monitoring system.

(8) Nozzle and burner design.

(9) Construction materials.

(10) Location and description of temperature, pressure, flow indication and control devices.

(11) Feed minimum temperature interlock system.

d. The expected incinerator operation information, including:

(a) Gas zone temperatures and detention time;

(b) Waste feed rate;

(c) Combustion zone temperature;

(d) Indication of combustion gas velocity;

(e) Expected stack gas volume, flow rate, and temperature;

(f) Computed residence time for waste in the combustion zone;

(g) Proposed waste feed cutoff limits based on the identification significant operating parameters.

(h) Operation of feed temperature maintenance interlock system.

e. Such supplemental information as the executive director finds necessary to achieve the purposes of this paragraph.

§ 9.5. Recordkeeping.

Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three years from the date the application is signed.

§ 9.6. Signatories to permit applications and reports.

A. Applications.

All permit applications shall be signed as follows:

1. For a corporation: By a principal corporate officer as defined in Part I.

2. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: By either a principal executive officer (see Part I) or ranking elected official.

B. Reports.

All reports required by permits and other information requested by the executive director shall be signed by a person described in § 9.6 A above or by 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 § 9.6 A;

2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity; and

3. The written authorization is submitted to the executive director.

C. Changes to authorization.

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 satisfying the requirements shall be submitted to the executive director prior to or together with any reports, information or applications to be signed by an authorized representative.

D. Certification.

Any person signing a document under § 9.6 A or § 9.6 B shall make the following certification:

"I certify under penalty of law that this document and all attachments are 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."

§ 9.7. Special infectious waste management permits.

A. Emergency permits.

Notwithstanding any other provision of Part IX, in the event the executive director finds an imminent and substantial endangerment to human health or the environment, the executive director may issue a temporary emergency permit to a facility to allow treatment, storage, transportation or disposal of infectious waste for a nonpermitted facility or infectious waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

2. Shall not exceed 90 days in duration;

3. Shall clearly specify the infectious waste to be received, and the manner and location of their treatment, storage, transportation or disposal;

4. May be terminated by the executive director at any time without process if it is determined that termination is appropriate to protect human health or the environment; and

5. Shall be accompanied by a public notice as required by the Virginia Administrative Process Act, including:

a. Name and address of the office granting the emergency authorization;

b. Name and location of the permitted facility;

c. A brief description of the wastes involved;

d. A brief description of the action authorized and reasons for authorizing it;

e. Duration of the emergency permit; and

6. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of these regulations.

B. Research, development and demonstration permits.

1. The executive director may issue a research, development and demonstration permit for any infectious waste treatment facility which proposes to utilize an innovative and experimental infectious waste treatment technology or process for which permit standards for such experimental activity have not been promulgated. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

a. Shall provide for the construction of such facilities as necessary, and for operation of the facility for no longer than one year unless renewed as provided in § 9.7 D 4; and

b. Shall provide for the receipt and treatment by the facility of only those types and quantities of regulated medical waste which the executive

director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

c. Shall include such requirements as the executive director deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure and remedial action), and such requirements as the executive director deems necessary regarding testing and providing of information to the executive director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this section, the executive director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part IX.

3. The executive director may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

4. Any permit issued under § 9.7 B may be renewed not more than three times. Each such renewal shall be for a period of not more than one year.

§ 9.8. Conditions applicable to all permits.

The following conditions apply to all regulated medical waste management permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations shall be given in the permit.

A. Duty to comply.

The permittee shall comply with all conditions of the permit, except that permittee need not comply with the conditions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit (see § 9.7 A). Any permit noncompliance, except under the terms of an emergency permit, constitutes a violation of Title 10.1, Code of Virginia, and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

B. Duty to reapply.

If the permittee wishes to continue a regulated activity after the expiration date of his permit, he shall apply for and obtain a new permit.

C. Need to halt or reduce activity not a defense.

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.

D. Duty to mitigate.

In the event of noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment.

E. Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with permit conditions.

F. Permit actions.

The permit may be modified, revoked, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation, and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Property rights.

The permit does not convey any property rights of any sort, or any exclusive privilege. Possession of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

H. Duty to provide information.

The permittee shall furnish to the Commonwealth within a reasonable time, any pertinent information which the executive director may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the permit.

I. Inspection and entry.

The permittee shall allow the executive director or an authorized representative, upon the presentation of credential and other documents as may be required by law, to:

1. Enter at reasonable times upon the permittee's premises where a regulated facility or activity is located or conducted, or where records shall be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the regulations, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. The permittee shall retain records of all monitoring information, including all calibrations and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, certification or application. This period may be extended by request of the executive director at any time.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

K. Signatory requirement.

All applications, reports, or information submitted to the executive director shall be signed and certified as specified as § 9.6.

L. Reporting requirements.

1. Planned changes. The permittee shall give written notice to the executive director as soon as possible of any planned physical alterations or conditions to the permitted facility.

2. Anticipated noncompliance. The permittee shall give advance written notice to the executive director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements. For a new facility, the permittee may not commence treatment, storage or disposal of infectious waste; and for a facility being modified the permittee may not treat, store or dispose of regulated medical waste in the modified portion of the facility, until:

a. The permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee stating that the facility has been constructed or modified in compliance with the permit; and

b. The executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit.

3. Transfers. This permit is not transferable to any person except with the approval of the executive director. The executive director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary. If the executive director finds that a name change is a minor modification, the requirements of § 9.17 will apply.

4. Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit or these regulations.

5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. Twenty-four hour reporting.

a. The permittee shall report to the department any noncompliance which may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

b. The following shall be included as information which shall be reported orally within 24 hours:

(1) Information concerning release of any regulated medical waste that may cause an endangerment to public health.

(2) Any information of a release or discharge of infectious waste, or of a fire or explosion from a facility, which could threaten the environment or

human health outside the facility. The description of the occurrence and its cause shall include:

(a) Name, address and telephone number of the owner or operator;

(b) Name, address and telephone number of the facility;

(c) Date, time and type of incident;

(d) Name and quantity of material(s) involved;

(e) The extent of injuries, if any;

(f) An assessment of actual or potential hazards to the environment and human health outside the facility, where this is applicable; and

(g) Estimated quantity and disposition of recovered material that resulted from the incident.

c. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The submission 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, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance. The executive director may waive the five-day notice requirement in favor of a written report within 15 days.

7. Other information where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the executive director, he shall promptly submit such facts or information.

§ 9.9. Establishing permit conditions.

A. General.

In addition to conditions required in all permits, the executive director shall establish conditions as required on a case-by-case basis, for the duration of permits, schedules of compliance, monitoring, and to provide for and assure compliance with all applicable requirements of these regulations.

Each permit issued under Part IX shall contain terms and conditions as the executive director determines necessary to protect human health and the environment.

B. An applicable requirement is a Commonwealth statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit.

An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 9.15.

C. New or reissued permits, and to the extent allowed under § 9.15, modified or revoked and reissued permits, shall incorporate each of the applicable requirements in these regulations.

D. Incorporation.

All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements shall be given in the permit.

§ 9.10. Duration of permits and renewal of permits.

A. Infectious waste management permit shall be effective for a fixed term not to exceed 10 years.

B. The term of a permit shall not be extended by modification beyond the maximum duration specified in this part.

C. The executive director may issue any permit for a duration that is less than the full allowable term under this part.

D. If the holder of a valid permit for an regulated medical waste management facility files with the executive director a request to renew or extend the permit at least 180 days prior to the expiration of that permit, the executive director will cause an audit to be conducted of the facility's past operation, its current condition and the records held by the department concerning the facility. Within 60 days of receipt of a proper request, the department will report to the applicant the results of the audit and those items of correction or information required before renewal will be considered. At the time of filing, the applicant shall provide all information known to him that is changed or new since the original permit application and which he has not previously provided to the department. If the applicant files for renewal or extension less than 180 days prior to the expiration of the original permit or files an improper application the executive director shall deny the application for renewal. If an application for renewal has been denied for a facility, any further applications and submittals shall be identical to those for a new facility.

E. The executive director may refuse to renew a permit or issue a new permit for a facility if the facility has had a record of violations of the permit or regulations of the department, as evidenced by notices and other enforcement actions of the department; if the executive director believes current facilities may pose a threat to the health or environment or the facility will not comply with current regulations for design, siting and other physical characteristics which apply to new facilities.

§ 9.11. Effect of a permit.

A. Compliance with a valid permit during its term constitutes compliance for purposes of enforcement, with the Virginia Solid Waste Management Act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in these regulations.

B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

C. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Commonwealth or local law or regulations.

§ 9.12. Transfer of permits.

A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary.

§ 9.13. Schedule of compliance.

A. The permit may, when appropriate, specify a schedule of compliance leading to compliance with these regulations.

1. Any schedules of compliance under this part shall require compliance as soon as possible.

2. Except as otherwise provided, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year;

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, a permittee shall notify the executive director, in writing, of his compliance or noncompliance with the interim or final requirements.

§ 9.14. Modification, revocation and reissuance, or termination of permits.

A. If the executive director tentatively decides to modify or revoke and reissue a permit, he shall prepare a draft permit incorporating the proposed changes. The executive director may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the executive director shall require the submission of a new application.

1. In a permit modification under this part, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this part, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

2. Minor modifications as specified in § 9.17 are not subject to the above requirements.

B. If the executive director tentatively decides to terminate a permit, he shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 9.18.

§ 9.15. Modification or revocation and reissuance of permits.

When the executive director receives any information, he may determine whether one or more of the causes listed for modification or revocation and reissuance or both exist. If cause exists, the executive director may modify or revoke and reissue the permit accordingly, subject to the limitations of § 9.15 C, and may request an updated application if necessary. If cause does not exist under this section or § 9.17, the executive director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 9.17 for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

A. Causes for modification.

The following are causes for modification but not revocation and reissuance of permits.

1. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. If the executive director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified

the application of different permit conditions, the permit may be modified accordingly if in the judgment of the executive director such modification is necessary to prevent significant adverse effects on public health or the environment.

3. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The permit condition requested to be modified was based on a promulgated infectious waste regulation;

(2) The Commonwealth has revised, withdrawn or modified that portion of the regulation on which the permit condition was based; and

(3) A permittee requests modification within 90 days after notice of the action on which the request is based.

b. For judicial decision, a court of competent jurisdiction has remanded and stayed Commonwealth regulations, if the remanded and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee within 90 days of judicial remand.

4. The executive director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

5. The executive director may modify a permit:

a. After the executive director receives the notification of expected closure, when he determines that extension of the 90 or 180 day periods under that part, modification of the 30-year post-closure period, continuation of the security requirements, or permission to disturb the integrity of the containment system under are unwarranted;

b. When the permittee has filed a request for a variance to the level of financial responsibility or when the executive director demonstrates that an upward adjustment of the level of financial responsibility is required.

c. To include conditions applicable to units at a facility that were not previously included in the facility's permit.

B. Cause for modification or revocation and reissuance.

The following are causes to modify or, alternatively, revoke and reissue a permit:

1. Cause exists for termination under § 9.16, and the executive director determines that a modification or revocation and reissuance is appropriate.

2. The executive director has received notification of a proposed transfer of an existing permit.

C. Facility siting.

The suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance.

§ 9.16. Termination of permits.

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit;

2. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

B. The executive director shall follow the applicable procedures of the Virginia Administrative Process Act in terminating any permit under this part.

§ 9.17. Minor modification of permits.

Upon the consent of the permittee, the executive director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this part, without following the required procedures for major modification, including those concerning public notice and public hearing. Any permit modification not processed as a minor modification under this part shall be made for cause and with draft permit and public notice as required. Minor modifications may only:

1. Correct typographical error;

2. Require more frequent monitoring or reporting by the permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility between the current and new permittees has been submitted to the director. Changes in the ownership or operational control of a facility may be made without further proceeding if the new owner or operator submits a revised permit application no later than 60 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the old owner or operator shall comply with the requirements of any financial assurance regulations, until the new owner or operator has demonstrated to the director that he is complying with the requirement. The new owner or operator shall demonstrate compliance with the requirements within six months of the date of the change in the ownership or operational control of the facility. Upon demonstration to the director by the new owner or operator of compliance, the director shall notify the old owner or operator in writing that he no longer needs to comply with § 9.7 as of the date of demonstration.

5. Change the lists of facility personnel or equipment in the permit's contingency plan.

§ 9.18. Draft permits.

A. Once an application is complete, the executive director shall tentatively decide whether to prepare a draft permit or to deny the application.

B. If the executive director tentatively decides to deny the permit application, he shall issue a notice of intent to deny. A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this part. If the executive director's final decision is that the tentative decision to deny the permit was incorrect, he shall withdraw the notice of intent to deny and proceed to prepare a draft permit.

C. If the executive director decides to prepare a draft permit, he shall prepare a draft permit that contains the following information:

1. All conditions under §§ 9.8 and 9.9;

2. All compliance schedules under § 9.13.

§ 9.19. Public notice of permit actions and public comment period.

A. Scope.

The executive director shall give public notice that the following actions have occurred:

1. A draft permit has been prepared; or

2. A hearing has been scheduled.

B. Timing.

1. Public notice of the preparation of a draft permit or the intent to deny a permit application shall allow at least 45 days for public comment;

2. Public notice of a public hearing shall be given at least 30 days before the hearing.

C. Methods.

Public notice of activities described in this part shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his rights to receive notice for any classes and categories of permits):

a. The applicant;

b. Any other agency which the executive director knows has issued or is required to issue a permit for the same facility or activity; and to each state agency having any authority under the state law with respect to the construction or operation of such facility, including the Department of Air Pollution Control for incinerator facilities;

c. Any unit of local government having jurisdiction over the area where the facility is proposed to be located and the appropriate regional solid waste planning agency;

2. Publication of a notice in a daily or weekly major local newspaper of general circulation.

D. Contents.

1. All public notices issued under this part shall contain the following minimum information;

a. Name and address of the office processing the permit action for which notice is being given;

b. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

c. A brief description of the business conducted at the facility or activity described in the permit

application or the draft permit;

d. The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or fact sheet, and the application; and

e. A brief description of the comment procedures required and the time and place of any hearing that will be held, including a statement of procedures to request a hearing unless already scheduled, and other procedures by which the public may participate in the final permit decision.

2. In addition to the general public notice described in § 9.19 D 1, the public notice of a hearing shall contain the following information:

a. Reference to the date of previous public notices relating to the permit;

b. Date, time, and place of the hearing; and

c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ 9.20. Public comments and requests for public hearings.

During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in § 9.23.

§ 9.21. Public hearings.

A. The executive director shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for a hearing during the public comment period specified in § 9.19 B 1.

B. In addition to hearings required in § 9.21 A, the executive director may hold a public hearing at his discretion, whenever, for instance, such a hearing might clarify one or more issues involved in permit decision.

C. Whenever a public hearing is scheduled:

1. Public notice of the hearing shall be given as specified in § 9.19 B; and

2. Shall be held in the locality convenient to the nearest population center to the proposed facility.

§ 9.22. Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the executive director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All supporting materials shall be included in full and not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of Commonwealth or federal statutes and regulations, documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available to the Commonwealth as directed by the executive director.

§ 9.23. Response to comments.

A. Any time that any final permit decision is issued, the executive director shall issue a response to comments, when a final permit is issued. This response shall:

1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

2. Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing.

B. The response to comments shall be available to the public.

APPENDIX 9.1

Application Cover Sheet

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF WASTE MANAGEMENT

APPLICATION FOR A PERMIT FOR AN INFECTIOUS WASTE MANAGEMENT FACILITY

NAME OF APPLICANT_____

ADDRESS_____

LOCATION OF SITE (Describe and attach map showing exact location)

SIZE OF SITE_____ Acres WASTE MANAGEMENT RATE(Estimated)_____ Tons Per Day

OPERATOR (If Different From Applicant)_____

OPERATOR ADDRESS_____

TYPE OF FACILITY FOR WHICH APPLICATION IS MADE

- Storage of Infectious Waste ☐
- Transportation of Infectious Waste ☐
- Incineration of Infectious Waste ☐
- Steam Sterilization of Infectious Waste ☐
- Experimental Treatment Method for Infectious Waste ☐

TYPES OF WASTE EXPECTED (Check all those for which permit is sought)

- Pathological ☐
- Hospital ☐
- Non hospital Medical Care ☐
- Mortuary ☐
- Laboratory ☐
- Etiological Agents ☐
- Industrial Biological ☐
- Infected Animal Maintenance ☐
- Quarantine Outside Hospital ☐
- Dialysis Unit ☐
- Other_____ ☐

_____ TITLE_____

Signature of Owner

TELEPHONE NUMBER ( )_____ DATE_____

NOTE: COVER SHEET ONLY, ATTACH OTHER REQUIRED DATA

PART ~~X~~ *XI* .
~~RULEMAKING PETITIONS~~ *VARIANCES* .

§ ~~10.1.~~ *§ 11.1.* General.

~~A.~~ Any person affected by these regulations may petition the ~~executive~~ director to grant a variance ~~or an exemption~~ from any requirement of these regulations, subject to the provisions of this part. Any petition submitted to the ~~executive~~ director is also subject to the provisions of the Virginia Administrative Process Act (§ § 9-6.14:1 ~~to 9-6.14:25~~ *et seq.* of the Code of Virginia).

~~B. The executive director will not accept any petition relating to:~~

~~1. Equivalent testing or analytical methods contained in EPA Publication SW-846; and~~

~~2. Definition of solid waste contained in these regulations.~~

§ 11.2. Procedures.

Procedures for petitioning the director for a variance and for the issuance of a variance are those contained in Part IX, Rulemaking Petitions and Procedures, Solid Waste Management Regulations, VR 672-20-10.

§ ~~10.2. Exemptions to classification as a solid waste.~~

~~A. Applicability.~~

~~1. A person who recycles waste that is managed entirely within the Commonwealth may petition the executive director to exclude the waste at a particular site from the classification as the solid waste (see Parts I and III). The conditions under which a petition for a variance will be accepted are shown in § 10.2 B. The wastes excluded under such petitions may still, however, remain classified as a solid waste for the purposes of other regulations issued by the Virginia Waste Management Board or other agencies of the Commonwealth.~~

~~2. A person who generates wastes at a generating site in Virginia and whose waste is transported across state boundaries, shall first obtain favorable decision from the appropriate agencies of other states before his waste may be considered for an exemption by the executive director.~~

~~3. A person who recycles materials from a generating site outside the Commonwealth and who causes them to be brought into the Commonwealth for recycling shall first obtain favorable decision from the appropriate authorities in that state before the waste may be considered for an exemption by the executive director.~~

~~B. Conditions for an exemption.~~

~~As the result of a petition and in accordance with the standards and criteria in § 10.2 C and the procedures in § 10.5, the executive director may determine on a case-by-case basis that the following recycled materials are exempt for the purposes of these regulations:~~

~~1. Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in Part I);~~

~~2. Materials that are reclaimed and then reused within the original primary production process in which they were generated;~~

~~3. Materials that have been reclaimed but shall be reclaimed further before the materials are completely recovered; and~~

~~4. Materials that are reclaimed and then reused in applications involving their placement into land.~~

~~C. Standards and criteria for exemptions.~~

~~1. The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:~~

~~a. The manner in which the material is expected to be recycled, and when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangement for recycling);~~

~~b. The reason that the applicant has accumulated the material for one or more years without recycling 75% of the volume accumulated at the beginning of the year;~~

~~c. The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;~~

~~d. The extent to which the material is handled to minimize loss;~~

~~e. Other relevant factors.~~

~~2. The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the~~

reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

a. How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

e. The location of the reclamation operation in relation to the production process;

f. Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

g. Whether the person who generates the material also reclaims it; and

h. Other relevant factors.

3. The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but shall be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

a. The degree of processing the material has undergone and the degree of further processing that is required;

b. The value of the material after it has been reclaimed;

c. The degree to which the reclaimed material is like an analogous raw material;

d. The extent to which an end market for the reclaimed material is guaranteed;

e. The extent to which the reclaimed material is handled to minimize loss; and

f. Other relevant factors.

4. The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused in applications involving placement into land. This determination will be based on the following factors:

a. How economically advantageous is the utilization process using reclaimed materials compared to the virgin materials;

b. The prevalence of the practice on an industry-wide basis;

c. The extent to which the material is handled before reclamation to minimize loss;

d. The location of the generating and reclamation operations in relation to the utilization process;

e. The chemical and physical characteristics of the material prior and after the reclamation process;

f. An estimate of the rate of annual usage of the reclaimed material;

g. Whether the person who generates the material also reclaims it;

h. Proximity of emplaced materials to ground and surface waters; and

i. Other factors relevant to public health and the environment.

§ 10.3. Variances from requirements.

A. Application and conditions.

The executive director may grant a variance from any regulation herein, except those contained in § 10.1 B, to a permittee if the permittee demonstrates to the satisfaction of the executive director that:

a. Strict application of the regulation to the facility will result in undue hardship that is unique to the applicant's particular situation; or

b. Technical conditions exist that make a strict application of the regulation impossible to achieve; and

2. Granting the variance will not result in an unreasonable risk to the public health or the environment.

B. Effects of the decisions.

1. When the executive director renders a decision under § 10.3 in accordance with the procedures contained in § 10.5, he may:

a. Deny the petition;

b. Grant the variance as requested; or

c. Grant a modified or partial variance.

2. When a modified variance is granted, the executive director may:

a. Specify the termination date of the variance;

b. The executive director may include a schedule for:

(1) Compliance, including increments of progress, by the facility with each requirement of the variance; and

(2) Implementation by the facility of such control measures as the executive director finds necessary in order that the variance may be granted.

§ 10.4. Rulemaking petitions.

A. Applicability.

Any person may petition the executive director to append, modify, or revoke any provision of these regulations.

B. The petitioner should submit all relevant information shown in § 10.5 A 1. The executive director will proceed with the processing of the petition in accordance with § 10.5 B. The final decision will be rendered by the Virginia Waste Management Board.

§ 10.5. Administrative procedures.

A. Submission of petition.

1. General petitioning requirements. The petition shall be submitted to the executive director by certified mail and shall include:

a. The petitioner's name and address;

b. A statement of petitioner's interest in the proposed action;

c. A description of desired action and a citation to the regulation from which a variance is requested;

d. A description of need and justification for the proposed action;

e. The duration of the variance, if applicable;

f. The potential impact of the variance on public health or the environment;

g. Other information believed by the applicant to be pertinent; and

h. The following statements signed by the petitioner or his authorized representative, if applicable:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. Additional requirements for petitions under § 10.2. In addition to the general information required of all petitioners under § 10.5 A 1:

a. To be successful the petitioner shall address the applicable standards and criteria listed in § 10.2 C.

b. For petitions submitted under § 10.2 B 4 following addition and annual quantities of waste covered by the petition;

(2) A description of the methodologies and equipment used to obtain representative samples and analyses, to include:

(a) The name and address of the laboratory facility performing the sampling on tests of the waste, if different from that of the petitioner;

(b) The qualifications of the persons sampling and testing the wastes;

(c) The dates of sampling and testing;

(d) A description of sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of samples; and

(e) A description of the tests performed and the results obtained.

(3) The description of the reclamation processes.

3. Additional requirements for petitions under § 10.3. In addition to the general information required of all petitioners under § 10.5 A 1, the petitioner shall submit:

a. An explanation of the applicant's particular situation which prevents the facility from achieving compliance with the cited regulation;

b. Other information as may be required by the department.

B. Petition processing.

1. After receiving a petition that includes the information required in § 10.5 A, the executive director will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the executive director will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for the request for additional information. If the executive director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with § 10.5 B 3. If the executive director continues to believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Virginia Administrative Process Act (VAPA).

3. After the petition is deemed complete:

a. The executive director will make a tentative decision to grant or deny the petition;

b. In case that petition may be tentatively denied, the executive director will offer the petitioner the opportunity to withdraw the petition, submit additional information, or request the executive director to proceed with the evaluation;

c. Unless the petition is withdrawn, the executive director will issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the applicant is located. The executive director will accept comment on the tentative decision for 30 days.

d. Upon a written request of any interested person, the executive director may, at his discretion, hold an informal fact finding meeting described in Article 3, Virginia Administrative Process Act. A person requesting a hearing shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The executive director may in any case decide on his own motion to hold such a meeting.

e. After evaluating all public comments the executive director will:

(1) In case of general rulemaking petitions (§ 10.4), formulate and submit a recommendation to the Virginia Waste Management Board; or

(2) In case of all other petitions:

(a) Within 15 days after the expiration of the comment period, notify the applicant of the final decision; and

(b) Publish it in a newspaper having circulation in the locality.

C. Petition resolution.

1. In the case of a denial, the petitioner has a right to request a formal hearing to challenge the rejection.

2. If the executive director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the executive director that the petitioner has failed to comply with any variance requirements.

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.

BOARD FOR ACCOUNTACY

Title of Regulation: **VR 105-01-2. Board for Accountancy Regulations.**

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

Effective Date: July 1, 1993.

Summary:

The amendments (i) establish professional limited liability companies; (ii) require, effective June 30, 1994, that the education requirements be met prior to applying for the CPA examination; (iii) establish conditioning requirements to accommodate format changes to the Uniform CPA Examination which will become effective with the May 1994 administration; (iv) require regulants who fail to renew their license in excess of 12 months to complete prescribed continuing professional education; (v) establish late fees for regulants who fail to maintain their CPA certificate, renew their license, professional corporation or limited liability company registration for a period of 12 months or longer; (vi) modify the provisions for the use of a sole proprietor name, partnership name and professional corporation; (vii) establish standards of practice for the use of a professional limited liability name; (viii) modify the standards of practice in reference to client records; (ix) clarify the CPE reporting period; (x) clarify services as a lecturer or instructor for CPE credit; and (xi) clarify the acceptable subject areas for CPE.

Substantive changes were made to the proposed regulations as indicated below:

1. The definition of "principal" was amended in the final regulations to include a certified public accountant who is a member of a limited liability company.

2. Section 2.1 B d 1 and 2.1 B d 2 were deleted from the final regulations.

3. Section 2.1 B d 3 was amended in the final regulations to require effective June 30, 1994, instead of January 1, 1994, that all education requirements shall be met prior to applying for the examination.

4. Section 2.5 was amended in the final regulations clarifying that members of a limited liability company are required to be licensed. In addition, the board deleted the last sentence of § 2.5 in that the language was obsolete.

5. Section 4.8 was amended in the final regulations to include the reference to officers.

6. Section 4.12 was amended in the final regulations clarifying that a member of a limited liability company must comply with the independence regulation.

7. Section 4.23 5 was amended in the final regulations to read as follows:

. . . it shall not be considered a violation of this section if a regulant declines . . .

In addition to these changes, some punctuation, modification, and revisions were made for clarity and consistency.

VR 105-01-2. Board for Accountancy Regulations.

PART I.
GENERAL.

§ 1.1. Definitions.

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

"Accredited institution" means any degree-granting college or university accredited at the time of the applicant's degree or attendance by any of the following: Middle States Association of Colleges and Schools; New England Association of Schools and Colleges; North Central Association of Colleges and Schools; Northwest Association of Schools and Colleges; Southern Association of Colleges and Schools; and Western Association of Schools and Colleges.

"Anniversary date" means September 30 of each even-numbered year.

"Certification" means the issuance of a certificate to a person who has met all the requirements of Part II of these regulations.

"Certify," "examine," "review," or *"render or disclaim an opinion,"* when referenced to financial information or the practice of public accountancy, are terms which, when used in connection with the issuance of reports, state or imply assurance of conformity with generally accepted

accounting principles, generally accepted auditing standards, and review standards. The terms include forms of language disclaiming an opinion concerning the reliability of the financial information referred to or relating to the expertise of the issuer.

"Client" means a person or entity that contracts with or retains a firm for performance of accounting services.

"Contact hour" means 50 minutes of participation in a group program or 50 minutes of average completion time in a self-study program.

"Continuing Professional Education (CPE)" means an integral part of the lifelong learning required to provide competent service to the public; the formal set of activities that enables accounting professionals to maintain and increase their professional competence.

"Credit hour" means successful completion of a course of study measured in a contact hour.

"Firm" means a sole proprietorship, partnership, professional corporation , *professional limited liability company* or any *permissible* combination practicing public accountancy in Virginia.

"Group program" means an educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

"Holding out" means any representation that a regulant is a certified public accountant, made in connection with an offer to practice public accounting. Any such representation is presumed to invite the public to rely upon the professional skills implied by the title "certified public accountant" in connection with the services offered to be performed by the regulant. For the purposes of this definition, a representation shall be deemed to include any oral or written communication conveying that the regulant is a certified public accountant, including without limitation the use of titles on letterheads, professional cards, office doors, advertisements and listings; but, it does not include the display of the original (but not a copy) of a currently valid certificate. A person who holds a valid certificate granted to him by the board may refer to himself as a certified public accountant or CPA but is not empowered to practice public accountancy until he obtains a valid license to do so.

"Individual firm name" means a name different from the name in which the individual's license is issued.

"Interactive self-study program" means a program designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware, or administrative systems that provide significant ongoing, interactive feedback to the learner regarding his learning process. Evidence of satisfactory completion of each program segment by the learner is often built into such programs. These programs clearly define lesson objectives and manage the student through the learning process by requiring frequent student response to questions that test for understanding of the material presented, providing evaluative feedback to incorrectly answered questions, and providing reinforcement feedback to correctly answered questions. Capabilities are used that, based on student response, provide appropriate ongoing feedback to the student regarding his learning progress through the program.

"Jurisdiction" means another state, territory, the District of Columbia, Puerto Rico, the U.S. Virgin Islands or Guam.

"License" means a license to practice public accounting issued under the provisions of Chapter 20 (§ 54.1-2000 et seq.) of Title 54.1 of the Code of Virginia.

"Manager" means a person who is a licensed certified public accountant designated by the members of a limited liability company to manage the professional limited liability company as provided in the articles of organization or an operating agreement.

"Member" means a person who is a licensed certified public accountant that owns an interest in a professional limited liability company.

"Noninteractive self-study program" means any self-study program that does not meet the criteria for interactive self-study programs.

"Performance of accounting services" means the performance of services by a regulant requiring the use of accounting and auditing skills, and includes the issuance of reports or financial statements, the preparation of tax returns, the furnishing of advice on accounting, auditing or tax matters, or the performance of operational or compliance audits.

"Principal" means a certified public accountant who is the sole proprietor of, or a partner [~~or~~ ,] shareholder [*or a member*] in, a firm.

"Professional corporation" means a firm organized in accordance with Chapter 7 (§ 13.1-542 et seq.) of Title 13.1 of the Code of Virginia.

"Professional limited liability company" means a firm organized in accordance with Chapter 13 (§ 13.1-1070 et seq.) of Title 13.1 of the Code of Virginia.

"Professional services and engagements" means the association between a client and a firm wherein the firm performs, or offers to perform, accounting services for the client.

"Professional staff" means employees of a firm who make decisions and exercise judgment in their performance of accounting services, but excludes employees performing routine bookkeeping or clerical functions.

"Regulant" means any Virginia certificate holder, licensee, professional corporation , [~~or~~] *professional limited liability company* or firm.

"Reporting cycle" means the current and two preceding reporting calendar years when meeting the requirements of § 5.1 of these regulations.

"Reporting year" means for the purposes of these regulations a calendar year.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs do not include informal learning.

"Virginia approved sponsor" means an individual or business approved by the board to offer continuing professional education in accordance with these regulations.

PART II.
ENTRY.

§ 2.1. Qualifications for certification.

Any person applying for certification as a certified public accountant shall meet the requirements of good character and education and shall have passed both a basic and an ethics examination, as approved by the board.

A. Character.

The board may deny application to sit for the basic examination or deny certification upon a finding supported by clear and convincing evidence of a lack of good character. An applicant's history of dishonest or felonious acts, lack of fiscal integrity or acts which would constitute violations of these regulations will be considered by the board in determining character. Evidence of the commission of a single act may be sufficient to show a lack of good character.

B. Education.

1. Each applicant shall have earned one of the following:

a. A baccalaureate or higher degree from a four-year accredited institution. The applicant shall have completed the following courses or their equivalent at an accredited institution:

Courses	Semester Hours
Principles of Accounting (or introductory level Financial Accounting and Managerial Accounting)	6
Financial Accounting/Accounting Theory (above the introductory level)	9
Cost/Managerial Accounting (above the introductory level)	3
Auditing	3
Taxation	3
Business (Commercial) Law (exclusive of Legal Environment of Business)	3
Computer Information Systems	3
Principles of Economics	3
Principles of Management	3
Principles of Marketing	3
Business Finance	3
Total	42

~~b. Provided the applicant initially applies and sits for the examination by November 30, 1992, the education requirement will be satisfied if by July 31, 1988, the applicant had completed a baccalaureate or higher degree and had completed 27 semester hours in accounting subjects from an accredited institution. These courses must have included courses in accounting, auditing, cost accounting, and commercial law (but not more than six semester hours of commercial law); or~~

~~c.~~ *b.* Provided the applicant initially applies and sits for the examination by November 30, 1993, the education requirement will be satisfied if the applicant has completed a baccalaureate or higher degree with either a major in accounting or a concentration in accounting from an accredited institution as defined in § 1.1; or

~~d.~~ *c.* Provided the applicant initially applies and sits for the examination by November 30, 1993, the education requirement will be satisfied if the applicant has completed 120 semester hours of earned credit from an accredited institution of which at least 60 semester hours must be at the junior and senior level and must include the following business related courses, or their equivalent:

Courses	Semester Hours
Principles of Accounting	6
Principles of Economics	3
Principles of Marketing	3
Principles of Management	3

Finance 3

Information Systems 3

Statistics 3

Business Policy 3

Financial Accounting and Accounting Theory 6

Cost/Managerial Accounting 3

Auditing 3

Taxation 3

Commercial Law (not to exceed six semester hours) 3

Business Electives 15

Total 60

[~~d. By the year 2000, each applicant shall have earned one of the following:~~

~~(1) A masters or higher degree with a major in accounting from an American Assembly of Collegiate Schools of Business accredited institution; or~~

~~(2) One hundred fifty semester hours of earned credit and a baccalaureate degree with either a major in accounting or a concentration in accounting from an accredited institution as defined in § 1.1 which must include the following accounting related courses or their equivalent:~~

~~Courses ..... Semester Hours~~

~~Principles of Accounting (or introductory level Financial and Managerial Accounting) ..... 6~~

~~Financial and Cost/Managerial Accounting (above the introductory level) ..... 15*~~

~~Taxation ..... 6*~~

~~Auditing (to include Professional Ethics and Responsibilities) ..... 6*~~

~~Management or Accounting Computer Based Information Systems ..... 3*~~

~~Total Accounting Hours ..... 36~~

~~Business Law ..... 3*~~

~~Electives ..... 111~~

~~Total Required Hours ..... 150~~

~~* Upper division courses that must be taken at a four year accredited institution as defined in § 1.1.~~

~~(3) One hundred fifty semester hours of earned credit and a baccalaureate degree from an accredited institution as defined in § 1.1 which must include the following business and accounting related courses or their equivalent: -~~

~~Courses ..... Semester Hours~~

~~Principles of Economics ..... 6~~

~~Principles of Finance ..... 3~~

~~Principles of Management ..... 3~~

~~Principles of Marketing ..... 3~~

~~Statistics, Quantitative Applications in Business or Operations Management ..... 6~~

~~Business (Commercial) Law ..... 3*~~

~~Policy, Strategy, or an Integrative Business or Accounting Course ..... 3~~

~~Total General Business ..... 27~~

~~Principles of Accounting (or introductory level Financial and Managerial Accounting) ..... 6~~

~~Financial and Cost/Managerial Accounting (above the introductory level) ..... 15*~~

~~Taxation ..... 6*~~

~~Auditing (to include Professional Ethics and Responsibilities) ..... 6*~~

~~Management or Accounting Computer Based Information Systems ..... 3*~~

~~Total Accounting Hours ..... 36~~

~~Electives ..... 87~~

~~Total Required Hours ..... 150~~

~~* Upper division courses that must be taken at a four year accredited insitutition as defined in § 1.1.~~]

[~~e.~~ *d.*] Applicants whose degrees or diplomas were earned at colleges or universities outside the United States shall have their educational credentials evaluated by a foreign academic credentials service approved by the board to determine the extent to which such credentials are equivalent to the education requirements set forth above.

Such credentials may be accepted by the board as meeting its educational requirements fully, partially,

or not at all.

2. Evidence of education. Each applicant shall submit evidence of having obtained the required education in the form of official transcripts transmitted directly from the accredited institution. In unusual circumstances other evidence of education may be accepted when deemed equivalent and conclusive.

3. Education prerequisite to examination. The education requirements shall be met prior to examination. An applicant may, however, be admitted to the May examination if he will have completed the education requirements by the succeeding June 30, and to the November examination if he will have completed the education requirements by the succeeding December 31, and has filed evidence of enrollment in the required courses as specified by the board. *Effective* [~~January 1,~~ *June 30*] , *1994, the education requirements shall be met prior to applying for the examination.*

C. Examination.

1. Each applicant for an original CPA certificate in Virginia must pass a basic ~~four-part,~~ written national uniform examination in auditing, business law, theory of accounting, and accounting practice *and other such related subject areas as deemed appropriate by the board from time to time* . Applicants who have no unexpired examination credits must sit for all parts of the basic examination. Each part of the basic examination must be passed with a grade of 75. The board may use all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants to assist it in performing its duties.

The fee for examination shall be $117. The fee for reexamination shall be $117. The fee for proctoring out-of-state candidates shall be $75. Fees shall not be prorated and are nonrefundable except in accordance with § 2.1 C ~~7~~ *8* .

2. Examination credits. Credits will be given for basic examination ~~parts~~ *sections* passed through five successive offerings subsequent to the first occasion when credit is earned, provided that:

a. No credit will be allowed until either *the section principally testing* accounting practice or two other ~~parts~~ *sections* are passed at a single sitting; and

b. The candidate sits for all ~~parts~~ *sections* for which credit has not previously been granted; and

~~c. The candidate receives a minimum grade of 50 in each part not passed, except if three parts are passed at a single examination no minimum grade shall be required on the fourth part.~~

c. The candidate receives a minimum grade of 50 in each section not passed, except if all sections but one are passed at a single examination, no minimum grade shall be required on the remaining section.

3. Effective with the May 1994 examination, credits will be awarded if, at a given sitting of the examination, a candidate passes two or more, but not all, sections. The candidate shall be given credit for those sections passed, and need not sit for reexamination in those sections, provided:

a. The candidate wrote all sections of the examination at that sitting;

b. The candidate attained a minimum grade of 50 on each section not passed at each sitting;

c. The candidate passes the remaining sections of the examination within five consecutive examinations given after the one at which the first sections were passed;

d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections not yet passed;

e. In order to receive credit for passing additional sections in any such subsequent sitting, the candidate attains a minimum grade of 50 on sections written but not passed on such sitting; and

f. Any candidate who has been awarded conditional credit for a section passed prior to May 1994 shall be awarded conditional credit as specified below:

(1) A candidate who has been awarded conditional credit for the accounting practice section shall be awarded conditional credit for the accounting and reporting section, and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.

(2) A candidate who has been awarded conditional credit for either the auditing or the business law (renamed business law and professional responsibilities) section, or both, shall retain such credit until he passes the remaining sections, or until the conditional status of such credit expires, whichever occurs first.

(3) A candidate who has been awarded conditional credit for the accounting theory section shall be awarded conditional credit for the financial accounting and reporting section and shall retain such credit until he passes the remaining sections or until the conditional status of such credit expires, whichever occurs first.

~~3.~~ *4.* Examination credits, exceptions. The board may, at its discretion, waive any of the above requirements for carryover examination credits for candidates who suffer documented serious personal illness or injury, or death in their immediate family, or who are prevented from meeting these requirements due to the obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the examination missed or within 6 months of the completion of military or Peace Corps service whichever is later.

~~4.~~ *5.* Conduct in basic examination. Each applicant shall follow all rules and regulations established by the board with regard to conduct at the basic examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the examination site on the date of the examination.

~~5.~~ *6.* Loss of credit or eligibility. Any applicant found to be in violation of the rules and regulations governing conduct in the basic examination may lose established eligibility to sit for the examination or credit for examination parts passed.

~~6.~~ *7.* Application deadline. Application to sit for the basic examination shall be made on a form provided by the board and shall be filed in accordance with the instructions on the application along with all required documents by the first Friday in March for the May examination and by the first Friday in September for the November examination.

~~7.~~ *8.* Failure to appear; excused examination. An applicant who fails to appear for the basic examination or reexamination shall forfeit the fees charged for that examination or reexamination unless excused.

The board may, at its discretion, excuse an applicant for an examination until the next examination for military service when documented by orders or a letter from the commanding officer; or for serious injury, illness or physical impairment, any of which must be documented by a statement from the treating physician; or death in their immediate family, or for other good cause of similar magnitude approved by the board. The fee for the excused examination will be refunded.

§ 2.2. Original CPA certificate.

A. A CPA certificate will be granted to an applicant who has met all of the qualifications for certification outlined in § 2.1.

B. The fee for an original CPA certificate shall be $25. All fees are nonrefundable and shall not be prorated.

§ 2.3. Certificate by endorsement.

A CPA certificate will be granted to an applicant who holds a like valid and unrevoked certificate issued under the law of any jurisdiction showing that applicant is in good standing in the jurisdiction; provided:

1. The applicant meets all current requirements in Virginia at the time application is made; or

2. At the time the applicant's certificate was issued in the other jurisdiction the applicant met all requirements then applicable in Virginia; or

3. The applicant has met all requirements applicable in Virginia except the education requirement, or has passed the examination under different credit or grade provisions, and either:

a. The applicant has five years of experience in the performance of accounting services within the 10 years prior to application, or

b. The applicant has five years of experience in the performance of accounting services, one year of which was immediately prior to application and, within the 10 years prior to application, had completed 15 semester hours of accounting, auditing and related subjects at an accredited institution.

4. The fee for a certificate by endorsement shall be $90. All fees are nonrefundable and shall not be prorated.

§ 2.4. License/certificate maintenance.

Any person holding a Virginia CPA certificate shall either maintain a Virginia license to practice public accounting or file annually as a certificate holder not engaged in the practice of public accounting in Virginia and pay the required maintenance fee.

§ 2.5. Licensure.

Each certified public accountant who is engaged in or holding himself out to be engaged in the practice of public accountancy in Virginia must hold a valid license. This provision applies to professional staff who are eligible for licensure as set forth in § 2.7 as well as to sole proprietors, partners [, *members*] and shareholders. [~~Professional staff required to, but who do not, hold a license on the effective date of these regulations shall be deemed to be in compliance hereunder if an application for license is made no later than March 1, 1991, and is subsequently approved by the board.~~]

1. To be eligible for licensure an individual shall meet the qualifications for certification outlined in § 2.1 and one of the experience requirements set forth in § 2.7.

2. The fee for an initial CPA license shall be $75. All

fees are nonrefundable and shall not be prorated.

§ 2.6. Requirement for licensure; exception.

Only a certified public accountant, holding a valid Virginia license, may engage in the practice of public accounting in Virginia. However, this does not prohibit any person from affixing his signature to any statement or report for his employer's internal or management use designating the position, title, or office of the person.

§ 2.7. Experience and continuing professional education requirements for original license.

A. Experience.

Each applicant for an original license shall have met the following experience requirements:

1. Two years of experience in public accounting with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services, or

2. Two years of experience under the supervision of a certified public accountant in the performance of accounting services with at least 800 hours of that experience including the following:

a. Experience in applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in the accounting records; and

b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records; and

c. Experience in the planning of the program of audit work including the selection of the procedures to be followed; and

d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the accounting records; and

e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon; or

3. Three years of experience in the performing of accounting services which demonstrates intensive, diversified application of accounting principles, auditing standards or other technical standards pertaining to accounting and review services, tax services or management advisory services; or

4. Three years of teaching experience in upper level courses in accounting, auditing, and taxation at an accredited institution in conjunction with no less than five months experience with a public accounting firm with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services.

B. Education substituted for experience.

An applicant having a baccalaureate degree and courses as defined in § 2.1 B 1 and a master's degree from an accredited institution with 15 semester hours in graduate level accounting courses exclusive of those courses defined in § 2.1 B 1 will be credited with one year of required experience under this section.

C. Continuing professional education.

Individuals applying for original licensure after January 1, 1992, shall have completed in addition to one of the experience requirements, a minimum of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to application for licensure. For purposes of license renewal, the calendar year following the year in which the initial license is issued shall be considered the first reporting year for CPE as outlined in § 5.1 of these regulations.

§ 2.8. Registration of professional corporations *and professional limited liability companies* .

A. All professional corporations *and professional limited liability companies* practicing public accountancy in Virginia shall be registered by the board.

~~A.~~ *B.* The fee for registration shall be $50. All fees are nonrefundable and shall not be prorated.

~~B.~~ *C.* All registered professional corporations *and professional limited liability companies* shall meet the standards set forth in § 54.1-2005 of the Code of Virginia and Part IV of these regulations.

PART III.
RENEWAL/REINSTATEMENT.

§ 3.1. Requirement for renewal.

Effective September 30, 1992, each license to practice public accounting *; or* CPA certificate maintenance ~~or registration certificate of a professional corporation~~ shall be renewed annually. *A registration certificate of a professional corporation or professional limited liability company shall be renewed biennially.*

A. Effective September 30, 1992, each license to practice public accounting ~~or registration certificate of a professional corporation~~ shall expire annually on September 30. Maintenance fees for CPA certificates shall also be due on September 30. *A registration certificate of a professional corporation or professional limited liability company shall be renewed September 30 of each*

even-numbered year. The board will mail a renewal notice to the regulant at the last known address of record. Failure of the regulant to receive written notice of the expiration does not relieve him of the requirement to renew or pay the required fee.

B. Renewal fees are as follows:

1. The fee for renewal of a CPA license to practice public accounting shall be $55.

2. The fee for renewal of the registration certificate of a professional corporation shall be $50.

3. The fee for renewal of the registration certificate of a professional limited liability company shall be $50.

~~3.~~ *4.* The CPA certificate maintenance fee shall be $20.

~~4.~~ *5.* All fees are nonrefundable and shall not be prorated.

C. If the required fee is not received by October 30 an additional fee of $20 for certificate maintenance, $55 for license renewal ~~and~~ , $50 for professional corporation , *and $50 for professional limited liability company* registration shall be required.

D. Applicants for renewal of the CPA certificate maintenance or license to practice public accounting shall certify on a form provided by the board that they continue to meet the standards for entry as set forth in § 2.1 A.

Applicants for renewal of the license to practice public accounting shall meet the requirements of Part V. Failure to comply with Part V will result in the denial of the license renewal.

E. The board, in its discretion, and for just cause, may deny renewal of a license to practice public accounting, registration or certificate maintenance. Upon such denial, the applicant for renewal may request that a hearing be held in accordance with the provisions of the Administrative Process Act.

§ 3.2. Requirement for reinstatement.

A. If the regulant fails to renew his license to practice public accounting or registration or pay his certificate maintenance fee within six months following the expiration, he will be required to present reasons for reinstatement and the board may, in its discretion, grant reinstatement or require a requalification or reexamination or both.

B. The fee for reinstatement of the license to practice public accounting shall be $150, the fee for reinstatement of the professional corporation registration shall be $100 , *the fee for reinstatement of a professional limited liability company registration shall be $100,* and the fee for reinstatement of the certificate maintenance shall be $50. All fees are nonrefundable and shall not be prorated.

C. Applicants for reinstatement of the CPA certificate or license to practice public accounting shall certify on a form provided by the board that they continue to meet the standards for entry as set forth in § 2.1 A.

D. If the regulant has failed to renew his license to practice public accounting for a period of *up to* 12 months ~~or longer~~ , he shall be required in accordance with Part V of these regulations to complete *a minimum of* 40 credit hours of Continuing Professional Education (CPE) with a minimum of eight CPE credit hours in accounting and auditing and eight CPE credit hours in taxation within the preceding 12 months prior to application. *If the regulant has failed to renew his license in excess of 12 months, he shall be required to complete a continuing education program specified by the board which shall require him to complete 40 hours of CPE if he failed to renew the license for one year, 80 hours of CPE if he failed to renew the license for two years and 120 hours of CPE if he failed to renew the license for three years, minus the hours which he had taken during this time period.*

E. If the regulant has failed to maintain his CPA certificate, renew his license, professional corporation or limited liability company registration for a period of 12 months or longer, a late fee, in addition to the reinstatement fees outlined in § 3.2 B, will be required.

The late fee shall be $75 for each renewal period in which the regulant failed to maintain his CPA certificate, or failed to renew his license, professional corporation or limited liability company registration.

~~E.~~ *F.* The board, in its discretion, and for just cause, may deny reinstatement of a license to practice public accounting, registration or certificate maintenance. Upon such denial, the applicant for reinstatement may request that a hearing be held in accordance with the provisions of the Administrative Process Act.

PART IV.
STANDARDS OF PRACTICE.

§ 4.1. Regulant accountable for service rendered.

Whenever a regulant offers or performs any services in Virginia related to the performance of accounting services regardless of the necessity to hold a license to perform that service, he shall be subject to the provisions of these regulations. A regulant shall be responsible for the acts or omissions of his staff in the performance of accounting services.

§ 4.2. Use of terms.

No firm with an office in Virginia shall use or assume

the title or designation "certified public accountant," "public accountant," "CPA," or any other title, designation, phrase, acronym, abbreviation, sign, card, or device tending to indicate that it is engaged in or holding itself out to be engaged in Virginia in the practice of public accountancy unless all principals and professional staff of that firm who work in Virginia or who have substantial contact with work in Virginia and who meet the qualifications for licensure, currently hold a valid Virginia license.

§ 4.3. Notification of change of address or name.

Every regulant shall notify the board in writing within 30 days of any change of address or name.

§ 4.4. Sole proprietor name.

~~A sole proprietor shall use his own name as the firm name except that a proprietor surviving the death or withdrawal of all other partners may continue using the name of those partners for not more than two years after becoming a sole proprietor.~~

A sole proprietor shall use his own name as the firm name. However, a sole proprietor surviving the death or withdrawal of all other partners in a partnership may continue using the names of those partners for not more than two years after becoming a sole proprietor. A sole proprietor surviving the death or withdrawal of all other members in a professional limited liability company may continue using the names of those members for not more than two years after becoming a sole proprietor.

§ 4.5. Partnership name.

~~A licensee~~ *Licensees* shall not practice in a partnership that includes a fictitious name, *a name that* indicates fields of specialization, or *a name that* includes the terms "company," "associates" or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed partner. The name of one or more ~~past~~ partners ~~or~~ *in a predecessor partnership,* shareholders *or licensed officers* of a predecessor *professional* corporation *, or members or managers of a predecessor professional limited liability company* may be included in the partnership firm name of a successor partnership.

§ 4.6. ~~Corporate name~~ *Professional corporation name* .

A licensee shall not practice in a ~~corporate name~~ *professional corporation* that includes a fictitious name, ~~which~~ *a name that* indicates fields of specialization, or *a name that* includes the terms "company," "associates," or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed shareholder *or licensed officer* . The names of one or more past shareholders or *licensed officers in a predecessor professional corporation,* partners in a predecessor partnership *, or members or managers in a predecessor professional limited liability company* may be included in the corporate firm name of a successor corporation. A shareholder surviving the death or retirement of all other shareholders may continue using the names of those shareholders, ~~or~~ partners in a predecessor partnership, *or those members in a predecessor professional limited liability company* for not more than two years after becoming a sole shareholder.

§ 4.7. Professional limited liability company name.

Licensees shall not practice in a professional limited liability company that includes a fictitious name, a name that indicates fields of specialization, or a name that includes the terms "company," "associates," or any similar terms or derivatives unless used to designate at least one unnamed, currently licensed member or licensed manager. The names of one or more past shareholders or licensed officers in a predecessor professional corporation, partners in a predecessor partnership, or members or managers in a predecessor limited liability company may be included in the firm name of a successor professional limited liability company.

§ ~~4.7.~~ *§ 4.8.* Notification of changes in firm.

A licensee shall notify the board in writing within 30 days after occurrence of any of the following:

1. The formation of a firm and its name, location and names of partners ~~or~~ , shareholders[, *officers*] , *members or managers* ;

2. The admission of any new *partner,* shareholder ~~or partner~~ , *or member* ;

3. The change in the name of any partnership ~~or~~ , professional corporation *or professional limited liability company* ;

4. The change in the supervisor of any branch office;

5. The change in the number or location of Virginia offices;

6. The opening of a new office in Virginia and the name of the supervisor; and

7. Any event which would cause the firm not to be in conformity with the provisions of these regulations.

§ ~~4.8.~~ *§ 4.9.* Sharing an office.

When sharing office facilities with any person who is not in the same firm, the licensee shall use practices and procedures which enable a reasonable person clearly to distinguish between the practice of the licensee and the operation of the other occupation or business.

§ ~~4.9.~~ *§ 4.10.* Resident manager in Virginia in charge of office.

Each branch office of a firm shall be managed by a certified public accountant licensed in Virginia. No licensed certified public accountant shall manage more than one office until such time as the licensee can provide, and the board approves, a management plan to provide supervision and quality control over the work product of all offices under the supervision of the licensee.

§ ~~4.10.~~ *§ 4.11.* Misleading name, letterhead, publication, etc.

Nothing shall be contained in a firm's name or in any firm letterhead, publication, form, card, etc., which states or implies an ability, relationship, or condition that does not exist.

§ ~~4.11.~~ *§ 4.12.* Independence.

A [~~regulant~~ *licensed*] individual or a firm of which he is a partner [~~or~~ ,] shareholder [*or member*] shall not express an opinion or conclusion on financial statements of an entity in such a manner as to imply that he or his firm [~~are~~ *is*] acting in an independent capacity when either the [~~regulant~~ *licensee*] or his firm during the period of a professional engagement or at time of expressing an opinion [~~have~~ *has*] any of the following interests in that entity:

1. [~~Had~~ *Has*] or [~~was~~ *has*] committed to acquire any direct or material indirect financial interest in the entity; or

2. Held the position of trustee, executor, or administrator of any trust or estate, if such trust or estate [~~had~~ *has*] or [~~was~~ *has*] committed to acquire any direct or material indirect financial interest in the entity; or

3. Held ownership of any joint closely-held business investment with the entity or any officer, director, or principal stockholder thereof which was material in relation to the net worth of the licensee; or

4. [~~Had~~ *Has*] a relationship with the entity as a promoter, underwriter, or voting trustee, director or officer, or in any capacity equivalent to that of a member of management or of an employee; or

5. [~~Had~~ *Has*] any loan to or from the entity, or from any officer, director, or principal stockholder thereof except loans made by a financial institution under normal lending procedures, terms and requirements such as: loans obtained by the licensee or firm which are not material in relation to the net worth of the borrower; or home mortgages; or other secured loans, except those secured solely by a guarantee of the firm or its licensees.

§ ~~4.12.~~ *§ 4.13.* Integrity and objectivity.

A regulant shall not knowingly misrepresent facts or subordinate his judgement to others. In tax practice, a regulant may resolve doubt in favor of his client as long as there is reasonable support for his position.

§ ~~4.13.~~ *§ 4.14.* Commissions.

A regulant shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client of products or services of others. Payments for the purchase of all, or part, of an accounting practice, retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons are permitted.

§ ~~4.14.~~ *§ 4.15.* Contingent fees.

A regulant shall not engage or offer to engage in the performance of accounting services for a fee which is contingent upon his findings or results of his services. This regulation does not apply either to services involving taxes in which the sole findings are those of the tax authorities or to the performance of accounting services for which the fees are to be fixed by courts or other public authorities.

§ ~~4.15.~~ *§ 4.16.* Incompatible occupations.

A regulant shall not concurrently engage in any other business or occupation which impairs his independence or objectivity in the performance of accounting services.

§ ~~4.16.~~ *§ 4.17.* Competence.

A regulant shall not undertake performance of accounting services which he cannot reasonably expect to complete with due professional competence, including compliance, when applicable, with these regulations.

§ ~~4.17.~~ *§ 4.18.* Auditing standards.

A regulant shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent certified public accountant unless he has complied with applicable generally accepted auditing standards in current use at the time his services were provided. Departures from compliance with generally accepted auditing standards must be justified.

§ ~~4.18.~~ *§ 4.19.* Accounting principles.

A regulant shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such statements contain any departure from generally accepted accounting principles in current use at the time the services were provided, which departure has a material effect on the statements taken as a whole. Any such departure is permissible only if the regulant can demonstrate that, due to unusual circumstances, the financial statements would otherwise be misleading. In such cases, his report must

describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principles would result in a misleading statement.

§ ~~4.19.~~ *§ 4.20.* Other technical standards.

A regulant shall comply with other technical standards pertaining to accounting and review services, tax services and management advisory services in current use at the time services were provided. Departure from compliance with other technical standards must be justified.

§ ~~4.20.~~ *§ 4.21.* Forecasts or projections.

No regulant shall vouch for the achievability of any forecast or projection.

§ ~~4.21.~~ *§ 4.22.* Confidential client information.

A regulant shall not, without the consent of his client, disclose any confidential information pertaining to his client obtained in the course of the performance of accounting services, except in response to a subpoena or summons enforceable by order of a court, in response to any inquiry made by the board or its agents, by a government agency, or by a recognized organization of certified public accountants, or by the client himself or his heirs, successors or authorized representative, or in connection with a quality control review of the regulant's practice.

§ ~~4.22.~~ *§ 4.23.* Client's records.

A regulant shall furnish to his firm's client or former client, ~~regardless of any payment due the firm,~~ within a reasonable time upon request:

1. A copy of the client's tax return *or a copy therof* ; or

2. A copy of any report, or other document, issued by the regulant or his firm to or for the client and not formally withdrawn by the regulant or his firm prior to the request; or

3. Any accounting or other record belonging to the client, or obtained from or on behalf of the client, which the regulant or another member of his firm removed from the client's premises or had received for the client's account; or

4. A copy of the regulant's working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records not otherwise available to the client. Examples would include worksheets in lieu of books of original entry or general or subsidiary ledgers such as a list of accounts receivable or depreciation schedule. All journal entries and supporting details would also be considered client's records ~~.~~ *; or*

5. With respect to subdivisions 1, 2 and 4 of this section, [*~~a regulant shall not be required~~ it shall not be considered a violation of this section if a regulant declines*] *to deliver to a client any of the foregoing until the client has paid any amounts owed for those services to which subdivisions relate.*

§ ~~4.23.~~ *§ 4.24.* Acting through others.

A regulant shall not permit others to carry out on his behalf, acts which, if carried out by the regulant would place him in violation of these regulations. A regulant shall not perform services for a client who is performing the same or similar services for another, if the regulant could not perform those services under these rules.

§ ~~4.24.~~ *§ 4.25.* Advertising.

A regulant shall not make any false, fraudulent, misleading, deceptive, or unfair statement or claim, including but not limited to:

1. A misrepresentation of fact; or

2. Failure to make full disclosure of any relevant fact; or

3. Representation of services of exceptional quality not supported by verifiable facts; or

4. A representation that might lead to unjustified expectation of higher level of performance or of favorable results.

§ ~~4.25.~~ *§ 4.26.* Solicitation.

A regulant shall not by any direct personal communication solicit an engagement for the performance of accounting services if the communication is overreaching or contains use of coercion, duress, compulsion, intimidation, threats, or harassment.

§ ~~4.26.~~ *§ 4.27.* Response to board communication.

A regulant shall respond by registered or certified mail within 30 days of the mailing of any communication from the board when requested.

§ ~~4.27.~~ *§ 4.28.* Revocation, suspension, and fines.

The board may suspend, deny renewal, or revoke any certificate, license, or registration, or may fine the holder thereof, upon a finding of any conduct reflecting adversely upon the regulant's fitness to engage in the performance of accounting services or for violation of any of the board's rules and regulations.

§ ~~4.28.~~ *§ 4.29.* Practice inspection and continuing professional education.

In lieu of or in addition to any remedy provided in §

~~4.27~~ *4.28* the board may require an inspection of a regulant's practice, require completion of specified continuing education, restrict regulant's area of practice, or impose such other sanctions as it deems appropriate.

§ ~~4.29.~~ *§ 4.30.* Petition for reinstatement or modification of a penalty.

No petition shall be considered while the petitioner is under sentence for a criminal offense related to the practice of accountancy, including any period during which the petitioner is on court imposed probation or parole for such offense. Otherwise, a person whose certificate or license has been revoked or suspended, or who has been subjected to any penalty may petition the board for reinstatement or modification of any penalty, no sooner than one year from the effective date of that decision. The petition shall be accompanied by at least two verified recommendations from licensees who have had personal knowledge of the activities of the petitioner since the time the disciplinary penalty was imposed. The board may consider all activities of the petitioner dating from the time the disciplinary action was taken; the offense for which the petitioner was disciplined; the petitioner's rehabilitative efforts and restitution to damaged parties; and the petitioner's general reputation for truth and professional ability.

§ ~~4.30.~~ *§ 4.31.* Ownership of records.

All statements, records, schedules, working papers, and memoranda made by a regulant incident to rendering services to a client in the performance of accounting services other than records specified in § ~~4.22~~ *§ 4.23* , shall become the property of the regulant's firm absent an express agreement between the firm and the client to the contrary. No such statement, record, schedule, working paper or memorandum covered by this section or in § ~~4.22~~ *§ 4.23* shall be sold, transferred, or bequeathed, to anyone other than a regulant without the consent of the client.

§ ~~4.31.~~ *§ 4.32.* Acts discreditable.

A regulant shall not commit an act discreditable to the profession of accountancy.

§ ~~4.32.~~ *§ 4.33.* Single act.

Evidence of the commission of a single act prohibited by these regulations shall be sufficient to justify a finding of violation, without evidence of a general course of conduct.

PART V.
CONTINUING PROFESSIONAL EDUCATION.

§ 5.1. CPE requirements for license renewal.

Effective January 1, 1992, all licensees shall be required to complete and maintain 120 credit hours of continuing professional education (CPE) during each reporting cycle. At a minimum, a licensee shall complete ~~and report to the board~~ 20 *CPE* credit hours ~~of CPE by January 31 of the year following the year in which credit was earned~~ *during each calendar year. Credits shall be reported to the board by January 31 of the year following the year in which credits were earned .*

For each three-year reporting cycle, the licensee shall have completed a minimum of 16 credit hours in accounting and auditing and a minimum of 16 credit hours in taxation as defined by § 5.5. The licensee shall not ~~report~~ *receive credit for* more than 24 credit hours of personal development as defined by § 5.5 during each reporting cycle.

In order to receive CPE credit for a license renewal, all credit hours shall be from an approved sponsor as set forth in § 5.4.

The board shall approve sponsors of CPE courses and not individual courses. A CPE course provided by an approved sponsor shall meet the CPE requirements set forth in the Rules and Regulations for Continuing Professional Education Sponsors and will be so designated. An investigation of an approved sponsor may be initiated based on a complaint or other information.

§ 5.2. Requirements for retaining records.

It is the responsibility of the licensee to retain evidence of satisfactory completion of CPE credit hours for a period of five years. Such documentation shall be in the form of the certificate of completion provided by the approved sponsor or verification from the accredited institution offering the course. If upon request, the licensee cannot provide such documentation, the licensee shall be subject to a fine which shall not exceed $1,000 in accordance with § 54.1-202 of the Code of Virginia.

§ 5.3. Requirements for reporting credit hours.

All CPE credit hours shall be reported to the board on a form provided by the board and subject to a possible audit. The date forms are received, not postmarked, by the board shall be the date used to determine compliance with the CPE reporting requirements.

Failure to complete or report CPE credit hours by January 31 of each succeeding year will result in the following late filing fees:

1. A $100 late filing fee shall be required for all reporting forms received after January 31 but before June 1.

2. A $250 late filing fee shall be required for all reporting forms received after May 31 but before August 1.

3. A $500 late filing fee shall be required for all

reporting forms when received after July 31. A license renewal shall be issued to the regulant upon receipt by the board of the late filing fee and evidence of compliance with § 5.1.

4. CPE credit hours taken during the late filing period to meet the requirement of the previous year shall not be reported for any succeeding year.

5. Individuals failing to meet the CPE requirements may be subject to requalification including possible reexamination and submission of experience qualifications.

6. The board may, at its discretion, waive or defer CPE requirements and late fees for licensees who suffer documented serious illness or injury, or who are prevented from meeting those requirements due to the obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board.

§ 5.4. Acceptable continuing professional education credit.

The board shall recognize the following as acceptable CPE credit:

1. Courses from sponsors approved by the board in accordance with the board's Rules and Regulations for Continuing Professional Education Sponsors; or

2. Courses from sponsors of continuing professional education programs listed in good standing with the National Registry of CPE Sponsors maintained by the National Association of State Boards of Accountancy (NASBA); or

3. Courses from accredited institutions as defined by § 1.1 of these regulations when offering college courses in the regular course curriculum. CPE credit for completing a college course in the college curriculum will be granted based on the number of credit hours the college grants for successful completion of the course. One semester hour of college credit is 15 CPE credit hours; on quarter hour of college credit is 10 CPE credit hours; or

4. Auditing of college courses from accredited institutions as defined by § 1.1 of these regulations. Licensees auditing a college course shall be granted one CPE credit hour for each contact hour of courses within the fields of study outlined in § 5.5 of these regulations. Attendance at two-thirds of scheduled sessions of audited courses shall be documented by the course instructor to receive CPE credit for the hours attended; or

5. Service as a lecturer or instructor ~~in a continuing professional education program provided the discussion meets subject matter requirements as defined in § 5.5 and is performed for an approved sponsor~~ *in courses which increase the licensee's professional competence and qualifies for CPE credit for participants as defined in §§ 5.4 and 5.5* . One credit hour shall be given for each 50-minute period of ~~service~~ *instruction* . For the instructor's preparation time, there will be awarded two additional hours of CPE for each credit hour of instruction. The instructor shall retain evidence to support the request for credit. The instructor shall be given no credit for subsequent sessions involving substantially identical subject matter. The maximum credit given for preparation as an instructor may not exceed 50% of the CPE credit hours reported each year with a maximum of 20 credit hours in any one reporting year ; or

6. Successful completion of a self-study course offered by an approved sponsor. CPE credit hours will be established by the sponsor according to the type of CPE self-study program and pre-tests to determine average completion time. Interactive self-study programs shall receive CPE credit equal to the average completion time. Noninteractive self-study programs shall receive CPE credit equal to one-half of the average completion time. An interactive self-study program that takes an average of two contact hours to complete shall be recommended for two CPE credit hours. A noninteractive self-study program that takes an average of two contact hours to complete shall be recommended for one CPE credit hour.

§ 5.5. Acceptable CPE subject areas.

A. ~~All CPE credit hours shall be in the fields of study within the following CPE subject areas~~ *All acceptable CPE shall be in subject areas within the following six fields of study* :

1. Accounting and auditing which includes accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative accounting principles issued by the standard-setting bodies, and any other related subject generally classified within the accounting discipline. It also includes auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and on the reporting on the results of audit findings, compilations, and review.

A minimum of 16 *credit* hours in accounting and auditing shall be completed in each three-year reporting cycle.

2. Advisory services which includes all advisory services provided by professional accountants – management, business, personal, and other. It includes Management Advisory Services and Personal Financial Planning Services. This section also covers an organization's various systems, the services provided by consultant practitioners, and the engagement management techniques that are typically used. The

systems include those dealing with planning, organizing, and controlling any phase of individual financial activity and business activity. Services provided encompass those for management, such as designing, implementing, and evaluating operating systems for organization, as well as business advisory services and personal financial planning.

3. Management which includes the management needs of individuals in public practice, industry, and government. Some subjects concentrate on the practice management area of the public practitioner such as organizational structures, marketing services, human resource management, and administrative practices. For individuals in industry, there are subjects dealing with the financial management of the organization, including information systems, budgeting, and asset management, as well as items covering management planning, buying and selling businesses, contracting for goods and services, and foreign operations. For licensees in government, this curriculum embraces budgeting, cost analysis, human resource management, and financial management in federal, state and local governmental entities. In general, the emphasis in this field is on the specific management needs of licensees and not on general management skills.

4. Personal development which includes such skills as communications, managing the group process, and dealing effectively with others in interviewing, counseling, and career planning. Public relations and professional ethics are also included.

A maximum of 24 *credit* hours may be ~~reported~~ *awarded* in personal development in each reporting cycle.

5. Specialized knowledge and application which includes subjects related to specialized industries, such as not-for-profit organizations, health care, oil and gas. An industry is defined as specialized if it is unusual in its form of organization, economic structure, source(s) of financing, legislation or regulatory requirements, marketing or distribution, terminology, technology; and either employs unique accounting principles and practices, encounters unique tax problems, requires unique advisory services, or faces unique audit issues.

6. Taxation which includes subjects dealing with tax compliance and tax planning. Compliance covers tax return preparation and review and IRS examinations, ruling requests, and protests. Tax planning focuses on applying tax rules to prospective transactions and understanding the tax implications of unusual or complex transactions. Recognizing alternative tax treatments and advising the client on tax saving opportunities are also part of tax planning.

A minimum of 16 *credit* hours in taxation shall be completed in each three-year reporting cycle.

§ 5.6. NASBA approved sponsors.

A. The board shall annually review the NASBA Registry's Standards for Approval.

B. A NASBA approved sponsor removed from the Registry for failure to comply with NASBA standards will no longer qualify as a Virginia approved sponsor. In such cases, the sponsor may apply to the board for approval as a Virginia approved sponsor.

FOR OFFICE USE ONLY
CODE ABA _____
NUMBER _____
DATE _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

FEE: $50.00
(Make Check payable to the Treasurer of Virginia)

ALL FEES ARE NONREFUNDABLE

APPLICATION FOR REGISTRATION AS A PROFESSIONAL LIMITED LIABILITY COMPANY PRACTICING PUBLIC ACCOUNTANCY

PLEASE PRINT OR TYPE

Company Name _____
(The name must be followed by the description "Professional Limited Company,"or "Professional Limited Liability Company" or "P.L.C." or P.L.L.C.")

Address of Company _____
Number and Street

_____
City/Town State Zip Code

Mailing Address _____
(If different than above)

Business Telephone Number: ( ) _____

MANAGERS OF COMPANY

NAME	VA CPA LICENSE NUMBER

MEMBERS OF COMPANY

NAME	VA CPA LICENSE NUMBER

Please attach evidence of your articles of organization with the State Corporation Commission to practice as a professional limited liability company in Virginia.

VSBA 10 (7-1-92)

Refer to Chapter 20 of Title 54.1 (§ 54.1-2005) and Chapter 13 of Title 13.1 (§ 13.1-556) of the Code of Virginia, as amended and to the Board's Rules and Regulations dealing with individual and Limited Liability Company professional practice.

CERTIFICATION

I, _____, Manager of the aforementioned Professional Limited Liability Company, do solemnly swear and affirm that the answers herein are true to the best of my knowledge and belief, that Chapter 20 of Title 54.1 and Chapter 13 of Title 13.1, of the Code of Virginia, as amended, and all applicable rules and regulations have been adhered to, and that this application is made for the purpose of securing the authority to practice public accountancy as a professional limited liability company under the designation "Certified Public Accountant(s)" or Public Accountant(s)."

_____
Manager

AFFIDAVIT

State of _____

City/County of _____

Sworn and subscribed to before me at _____ this _____ day of _____, 19 ____.

_____
Notary Public

My Commission expires _____

FEE: $50.00
(Make check payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR REGISTRATION AS A PROFESSIONAL CORPORATION PRACTICING PUBLIC ACCOUNTANCY

PLEASE PRINT OR TYPE

CORPORATE NAME _____

ADDRESS OF MAIN OFFICE _____
Number and Street City/Town State Zip Code

MAILING ADDRESS _____
(If different than above)

OFFICERS OF CORPORATION

Name	Title	Legal Residence Address in Full

BOARD OF DIRECTORS

Name of Each Director	Legal Residence Address in Full

THE FOLLOWING QUESTIONS MUST BE ANSWERED IN DETAIL:

1. Number of Shares of Stock Authorized to be Issued _____
2. Number of Shares of Stock Issued and Outstanding _____

LIST BELOW THE NAMES OF EACH OWNER OF CAPITAL STOCK IN CORPORATION:

Name of Each Owner	Legal Residence Address in Full	No. Shares Stock Owned	VA license No.

ALL FEES ARE NONREFUNDABLE

Revised 8/6/90

Refer to Chapter 20 of Title 54.1 (Section 54.1-2005) and Chapter 7 of Title 13.1 (Section 13.1-556) of the Code of Virginia, as amended and to the Board s Rules and Regulations dealing with individual and corporate professional practice.

CERTIFICATION

Does each shareholder practicing public accounting in Virginia hold a Virginia license? Yes ___ No ___ (If answer is no, attach explanation)

I, _____, President of the aforementioned corporation, do solemnly swear and affirm that the answers herein are true to the best of my knowledge and belief, that Chapter 20 of Title 54.1 and Chapter 7 of Title 13.1, of the Code of Virginia, as amended, and all applicable rules and regulations have been adhered to, and that this application is made for the purpose of securing the authority to practice public accountancy as a corporation under the designation "Certified Public Accountant(s)" or Public Accountant(s)."

_____
President

Attested to before me, the secretary of the corporation, this _____ day of _____, 19__.

_____
Secretary

AFFIDAVIT

State of _____

City/County _____

Sworn and subscribed to before me at _____ this _____ day of _____, 19__.

_____
Notary Public

My Commission expires _____

FOR BOARD FOR ACCOUNTANCY USE ONLY

Corporation organized under Virginia Law? _____

Do all shareholders who will practice in Virginia hold a valid Virginia license? _____

FOR OFFICE USE ON.
CODE Acc _____
NUMBER _____
DATE _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR REINSTATEMENT OF LICENSE TO PRACTICE PUBLIC ACCOUNTANCY, MAINTENANCE OF CPA CERTIFICATE OR REGISTRATION OF PROFESSIONAL CORPORATION

Section 3.2 of the Board's Rules and Regulations state that if you fail to renew your license, maintain your certificate or renew your professional corporation registration, you are required to apply for reinstatement and remit the appropriate fee.

CPA CERTIFICATE = $50.00
CPA CERTIFICATE AND LICENSE = $150.00
PROFESSIONAL CORPORATION REGISTRATION = $100.00
Make check payable to the Treasurer of VIRGINIA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD
ALL FEES ARE NONREFUNDABLE

PLEASE ANSWER THE FOLLOWING QUESTIONS:

(1) Name: _____

(2) Address: _____

_____

_____

(3) I hold license/certificate/registration numbered _____ which expired _____
(please Circle one)

(4) Please provide explanation for failure to renew: _____

_____

_____

(5) Have you accepted a fee for a professional service in Virginia since the license/certificate/registration expired ____ Yes ____ No (If Yes, provide details)

(6) Have you ever been convicted of a felony? ____ Yes ____ No
Have you ever been convicted of a misdeameanor? ____ Yes ____ No
If answer to either question is yes, provide details.

(7) If you are applying for reinstatement and your license has expired 12 months or longer, please provide the Board with documentation of 40 hours of CPE with a minimum of eight CPE credit hours in accounting and auditing and eight hours in taxation within the preceding 12 months prior to application.

Accounting and auditing
Subject Area _____ CPE Credit

_____
Course Title

Tax
Subject Area _____ CPE Credit

_____
Course Title

Subject Area _____ CPE Credit

_____
Course Title

(Please attach supporting documentation of completion of CPE)

FOR OFFICE USE ONLY

Staff Approval _____ Board Approval _____

Date _____ Date _____

VSBA-2 (10/23/91)

I hereby apply to the Board for Accountancy for reinstatement and certify under oath that I have read, and agree to abide by, the Virginia CPA law and rules and regulations of the Board, that all statements contained in this application and the statement(s) attached thereto are correct, to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

Date _____ Signature _____

AFFIDAVIT

State of _____

City/County of _____

This statement was signed and sworn to before me this ____ day of _____ 19__

_____
Notary Public

My Commission expires _____

FEE: $25.00
(Make check payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR ORIGINAL CPA CERTIFICATE

PLEASE TYPE OR PRINT

NAME _____
(Use name as you wish it to appear on certificate)

Social Security Number____ ___ _____

Home Address _____ ( ) _____
Street Number and Name Telephone Number

_____
City State Zip Code

Employer's Name _____ ( ) _____
Telephone Number

Business Address _____
Street Number and Name City State Zip Code

Date of completion of Uniform CPA Examination _____
Give Month/Year

Date of completion of AICPA Ethics Examination _____
(Attach copy of grade sheet or certificate) Month/Year

Have you ever been convicted of a felony? Yes___No___

Have you ever been convicted of a misdemeanor? Yes___No___

(If answer to either question is yes, attach full details)

I hereby declare that I am not now in the practice of public accountancy in Virginia and that I will not practice in Virginia without first securing a license.

_____ _____
Date Signature

AFFIDAVIT

State of _____

City/County of _____

This statement was signed and sworn to before me this ___day of _____ __19__

_____
Notary Public

My Commission Expires: _____

FOR BOARD USE ONLY

Certificate Number_____ Staff approval _____ Board approval_____

Date_____ Date_____ Date_____

ALL FEES ARE NONREFUNDABLE

Revised 8/6/90

FEE: $90.00
(Make check payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

MUST BE TYPED OR PRINTED

NAME _____ _____
(Use name as you wish it to appear on certificate) Social Security Number

Home Address _____ ( ) _____
Street Number and Name Telephone Number

_____
City State Zip Code

Employer _____

Business Address _____ ( ) _____
Street Number and Name Telephone Number

_____
City State Zip Code

Length of residence or employment in Virginia _____

Place of Birth _____

Have you ever been convicted of a felony? ___ Yes ___ No

Have you ever been convicted of a misdemeanor? ___ Yes ___ No

If your answer is "Yes," attach a statement providing all relevant details.

Original Certificate Number _____ Issued by _____ on _____
(Attach Completed Form R-2) Jurisdiction Date

Date of Completion of CPA Examination _____
(Attach completed VSBA-7 Form) Month/Year

Have you completed an AICPA Ethics Examination? ___ Yes ___ No if "yes" provide answer sheet or certificate; if "no" see order form.

Has your right to practice public accountancy in any jurisdication ever been suspended or revoked? ___ Yes ___ No
(If answer is "yes," attach full details)

Please submit three (3) character references by completing form VSBA R-3

Please provide official transcripts to be submitted directly from the institution to the Board showing evidence of completion of the education requirement.

FOR BOARD USE ONLY

Certificate Number_____ Staff Approval _____ Board Approval _____

Date_____ Date_____ Date _____

ALL FEES ARE NONREFUNDABLE

VSBA R-1
10/23/91

If you are applying for certification by endorsement under Section 2.3(3), please complete the attached VSBA-6 form documenting your experience. All experience, including current experience must be documented by your employer(s) using form VSBA-6. If necessary, the information given on the form may be amplified by an accompanying letter on letterhead, signed by the employer, and notarized.

Employer _____

Address _____

_____ ( ) _____
Telephone No.

Exact Dates of Employment: From _____ To _____

Employer _____

Address _____

_____ ( ) _____
Telephone No.

Exact Dates of Employment: From _____ To _____

If you wish also to obtain a Virginia CPA license please complete form VSBA-5.

I hereby declare that I am not now in the practice of public accountancy in Virginia and that I will not practice in Virginia without first securing a license.

_____ _____
Date Signature

==========

I hereby apply to the Board for Accountancy for a Virginia certificate by endorsement and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

==========

AFFIDAVIT

State of _____

City/County of _____
Subscribed and sworn to before me this ____ day of _____ 19 __.

_____
Notary Public

My commission expires _____

COMMONWEALTH of VIRGINIA

MILTON K. BROWN, JR.
Director

Department of Commerce
3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230-4917

RONALD K. LAYNE
Director of Administration and Finance
PEGGY S. McCREREY
Director of Regulatory Programs
BONNIE S. SALZMAN
Director of Investigation and Adjudication

TO: Roberta L. Banning, Assistant Director
Virginia Board for Accountancy

FROM: _____
Name of Board transferring grades

I certify that _____ sat for the Uniform CPA Examination under our jurisdiction on the dates listed below, with the results noted:

DATE	I.D.NO.	AUDITING	LAW	THEORY	PRACTICE

These grades were furnished by the Advisory Grading Service of the AICPA and we recommend that they be accepted.

CERTIFICATION

I certify that the foregoing statements are correct to the best of my knowledge and belief.

_____
Signature of Authorized Person

S E A L

O F

B O A R D

_____
Title

_____
Date

VSBA-7

TELEPHONE: (804) 367-8500
TDD: (804) 367-9753

COMMONWEALTH of VIRGINIA

MILTON K. BROWN, JR.
Director

Department of Commerce
3600 WEST BROAD STREET, RICHMOND, VIRGINIA 23230-4917

RONALD K. LAYNE
Director of Administration and Finance
PEGGY S. McCREREY
Director of Regulatory Programs
BONNIE S. SALZMAN
Director of Investigation and Adjudication

TO: _____
Name of Board which issued applicant's original certificate

FROM: Roberta L. Banning, Assistant Director
Virginia Board for Accountancy

The application for a Virginia CPA certificate submitted by _____ states that his or her original certificate was issued by your Board.

We would very much appreciate if you would provide us with the following infomration:

1. Certification Number _____ was issued on _____

2. The basis for certification were those checked below:

___ a written examination prepared by this Board

___ grades reported by the Advisory Grading Service for the Uniform CPA Examination.

___ Other

3. This certification is _____, or is not _____ in good standing. If not, please provide details.

4. This applicant completed the AICPA ethics examination on _____.

I certify that the foregoing statements are correct to the best of my knowledge and belief.

S E A L

O F

B O A R D

_____
Signature of Authorized Person

_____
Title

_____
Date

VSBA R-2

TELEPHONE: (804) 367-8500
TDD: (804) 367-9753

VIRGINIA BOARD FOR ACCOUNTANCY

Department of Commerce
3600 West Broad Street
Richmond, Virginia 23230
(804) 367-8505
Toll Free: 1-800-552-3016

TO THE ENDORSER OF AN APPLICANT FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

The applicant named below has applied for a Virginia CPA Certificate by Endorsement. You have been named as one of the applicant's endorsers, and the Virginia Board for Accountancy would very much appreciate your frank answers to the following questions. Any other comments you care to make regarding this applicant would also be of value.

ENDORSEMENT

1. Applicant's name _____

2. What type of relationship have you had with applicant? (Business, professional or social?) _____

3. Number of years you have known applicant: _____

4. Is he/she of good moral character? _____

5. To the best of your knowledge, has he or she been employed as an accountant and, if so, for how long? _____

6. If the answer to Number 5 is in the affirmative, what is his or her professional reputation? _____

7. Are your aware of any facts which might negatively affect the Board's consideration of this application? If so, please specify. _____

8. Your comments or recommendations: _____

Continue on reverse side if necessary

Signature _____

Name (PRINTED) _____

Address: _____

_____

Occupation: _____

Date _____

VSBA R-3

VIRGINIA BOARD FOR ACCOUNTANCY

Department of Commerce
3600 West Broad Street
Richmond, Virginia 23230
(804) 367-8505
Toll Free: 1-800-552-3016

TO THE ENDORSER OF AN APPLICANT FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

The applicant named below has applied for a Virginia CPA Certificate by Endorsement. You have been named as one of the applicant's endorsers, and the Virginia Board for Accountancy would very much appreciate your frank answers to the following questions. Any other comments you care to make regarding this applicant would also be of value.

ENDORSEMENT

1. Applicant's name _____
2. What type of relationship have you had with applicant? (Business, professional or social?)_____
3. Number of years you have known applicant: _____
4. Is he/she of good moral character? _____
5. To the best of your knowledge, has he or she been employed as an accountant and, if so, for how long?_____
6. If the answer to Number 5 is in the affirmative, what is his or her professional reputation?_____
7. Are your aware of any facts which might negatively affect the Board's consideration of this application? If so, please specify._____
_____
8. Your comments or recommendations: _____
_____
Continue on reverse side if necessary

Signature _____
Name (PRINTED) _____
Address: _____
_____
Occupation: _____
Date _____

VSBA R-3

VIRGINIA BOARD FOR ACCOUNTANCY

Department of Commerce
3600 West Broad Street
Richmond, Virginia 23230
(804) 367-8505
Toll Free: 1-800-552-3016

TO THE ENDORSER OF AN APPLICANT FOR A VIRGINIA CPA CERTIFICATE BY ENDORSEMENT

The applicant named below has applied for a Virginia CPA Certificate by Endorsement. You have been named as one of the applicant's endorsers, and the Virginia Board for Accountancy would very much appreciate your frank answers to the following questions. Any other comments you care to make regarding this applicant would also be of value.

ENDORSEMENT

1. Applicant's name _____
2. What type of relationship have you had with applicant? (Business, professional or social?)_____
3. Number of years you have known applicant: _____
4. Is he/she of good moral character? _____
5. To the best of your knowledge, has he or she been employed as an accountant and, if so, for how long?_____
6. If the answer to Number 5 is in the affirmative, what is his or her professional reputation?_____
7. Are your aware of any facts which might negatively affect the Board's consideration of this application? If so, please specify._____
_____
8. Your comments or recommendations: _____
_____
Continue on reverse side if necessary

Signature _____
Name (PRINTED) _____
Address: _____
_____
Occupation: _____
Date _____

VSBA R-3

FOR OFFICE USE ONLY
CODE A04
NUMBER
DATE

FEE: $75.00
(Make check payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-4917
(804) 367-8505

APPLICATION FOR LICENSING OF A VIRGINIA CPA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD
ALL FEES ARE NONREFUNDABLE

NAME _____ _____
Last First Middle Social Security No.

Home Address _____
Street number and name

_____ ( ) _____
City State Zip Code Telephone No.

Name of Employer or Firm _____

Business Address _____ ( ) _____
Street number and name Telephone No.

_____
City State Zip Code

Do you presently hold a valid CPA Certificate? Yes ___ No ___ Cert. No. _____
Have you ever been convicted of a felony? Yes ___ No ___
Have you ever been convicted of a misdemeanor? Yes ___ No ___
If answer to either question is yes, provide details.

Please check the experience requirement which you meet:
§ 2.7. Experience.

A. Each applicant for licensure shall have met one of the following:

_____ 1. Two years of experience in public accounting with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services, or

_____ 2. Two years of experience under the supervision of a certified public accountant in the performance of accounting services with at least 800 hours of that experience including the following:
   a. Experience in applying for a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in the accounting records; and
   b. Experience in the preparation of audit working papers covering the examination of the accounts usually found in accounting records; and
   c. Experience in the planning of the program of audit work including selection of the procedures to be followed; and
   d. Experience in the preparation of written explanations and comments on the findings of the examinations and on the accounting records; and
   e. Experience in the preparation and analysis of financial statements together with explanations and notes thereon; or

_____ 3. Three years of experience in the performing of accounting services which demonstrates intensive, diversified application of accounting principles, auditing standards or other technical standards pertaining to accounting and review services, tax services or management advisory services; or

_____ 4. Three years of teaching experience in upper level courses in accounting, auditing, and taxation at an accredited institution in conjunction with no less than five months experience with a public accounting firm with the giving of assurances and compilation services constituting not less than 800 hours of that experience with no more than 200 of such hours in compilation services.

Individuals applying after January 1, 1992, shall provide documentation of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to submission of this application.

Course Title	Subject area	CPE credit

Please attach supporting documentation of completion of CPE

I hereby apply to the Board for Accountancy for a Virginia CPA license and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

_____
Signature of Applicant

AFFIDAVIT

State of _____

City/County of _____

Subscribed and sworn to before me this ____ day of _____ 19__.

_____
Notary Public

My Commission expires _____

FOR OFFICE USE ONLY

Staff Approval _____ Board Approval _____

Date _____ Date _____

VSBA-9 (10/23/91)

FOR OFFICE USE ONLY
CODE/ADM _____
NUMBER _____
DATE _____

FEE: $75.00
(Make check payable to the Treasurer of Virginia)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMERCE
Board for Accountancy
Post Office Box 11066
Richmond, Virginia 23230-1066
(804) 367-8505

APPLICATION FOR ORGINIAL LICENSE TO PRACTICE PUBLIC ACCOUNTANCY IN VIRGINIA

INCOMPLETE APPLICATIONS WILL NOT BE REVIEWED BY THE BOARD
ALL FEES ARE NONREFUNDABLE

MUST BE TYPED OR PRINTED

NAME _____ _____
Last First Middle Social Security Number

Home Address _____ ( ) _____
Street number and name Telephone Number

_____
City State Zip Code

Employer _____

Business Address _____ ( ) _____
Street number and name Telephone Number

_____
City State Zip Code

Certificate Number _____ Date of Issuance _____

(Name on certificate if different from above _____)

Date of Completion of CPA Examination _____
Month/Year

Date of Completion of the AICPA Ethics Examination _____
Month/Year

Have you ever been convicted of a felony? Yes ___ No ___
Have you ever been convicted of a misdemeanor? Yes ___ No ___
If answer to either question is yes, provide details.

FOR OFFICE USE ONLY

Staff Approval _____ Board Approval _____ Reject/Conditions

Date _____ Date _____

Member _____

Member _____

VSBA-5 (10/23/91)

RECORD OF EXPERIENCE

(Refer to § 2.7 of the Rules and Regulations on Experience and CPE Requirements)

1. ATTEST AND REVIEW EXPERIENCE

FIRM NAME LOCATION to EXACT DATES

to

2. GENERAL ACCOUNTING EXPERIENCE

FIRM NAME LOCATION to EXACT DATES

to

3. TEACHING EXPERIENCE

INSTITUTION LOCATION to EXACT DATES

4. DIVERSIFIED ACCOUNTING EXPERIENCE:

EMPLOYER LOCATION to EXACT DATES

Credit under § 2.7(B) requested? Yes ____ No ____
Document with official transcripts submitted directly from the institution to the Board. Undergraduate and graduate transcripts are required.

All experience, including current experience, must be documented by your employer(s) using Form VSBA-6. If necessary, the information given on the form may be amplified by an accompanying letter on letterhead signed by the employer and notarized.

Individuals applying after January 1, 1992, shall provide documentation of 20 credit hours of CPE in the subject areas listed in § 5.5 within the preceding 12 months prior to submission of this application.

Course Title	Subject Area	CPE Credit

Please attach supporting documentation of completion of CPE.

TO: Department of Commerce
Board for Accountancy
3600 West Broad Street
Richmond, VA 23230-4917

FROM: _____
NAME OF FIRM OR EMPLOYER

RE: _____
APPLICANT FOR LICENSURE

1. Exact dates of employment: From _____ To _____

2. Reason for leaving, if applicable: _____

3. Was employment full-time? Yes _____ No _____

   If part-time, please indicate total number of hours worked: _____
   (2000 hours is considered one year experience)

4. Please describe the supervision provided the applicant. (Was the supervisor a CPA?) Yes ____ No ____

   _____

   _____

   _____

5. Please evaluate the quality of the applicant's performance: _____

   _____

   _____

   _____

6. Do you consider the applicant qualified by experience and demonstrated competence to become a CPA and to independently exercise the attest function? Yes ___ No ___

7. What were the applicant's job titles while with your organization?

Title	Time Period
_____	_____
_____	_____
_____	_____

(over)

VSBA-6 (10/23/91)

I hereby apply to the Virginia Board for Accountancy for a license as a Virginia certified public accountant and certify under oath that I have read, and agree to abide by, the Virginia CPA Law and the Rules and Regulations of the Board, that all statements contained in this application and the statement(s) thereto are correct, to the best of my knowledge and belief, and that I have withheld no information which might reasonably be expected to cause the Board to deny this application.

_____ _____
Date SIGNATURE OF APPLICANT

AFFIDAVIT

State of _____

City/County _____

Subscribed and sworn to before me this ____ day of _____ 19__.

_____
Notary Public

My commission expires _____

8. If applicant is no longer with your organization, is there any reason you would be unwilling to rehire him/her should a suitable opening become available?

_____

_____

Please refer to § 2.7 of the Rules and Regulations on experience requirements. If the experience of the applicant with you is:

2 years with attest and review experience with licensed CPA	complete Question #9
2 years general auditing experience	complete Question #10
3 years teaching experience	complete Question #11
3 years Diversified Accounting Experience	complete Question #12

9. Did the applicant's experience include emphasis on the independent examination and/or review of financial statements involving the applicable performance of either the audit or review functions? Yes___ No ___

How many hours of the applicant's time was so engaged? _____

Were generally accepted auditing standards or, were applicable, standards for accounting and review services applied? Yes___ No___

Was third party reliance on the financial statements involved? Yes ___ No___

List the types of organizations audited: _____

_____

_____

Describe the types of work assigned to the applicant: _____

_____

_____

10. Did the applicant's experience in (a) applying a variety of auditing procedures and techniques to usual and customary financial transactions, (b) preparation of auditing working papers (c) planning the program of audit work including the selection of the procedures to be followed, (d) preparation of written explanations and comments on the findings of the examinations and on the accounting records, or (e) preparation and analysis of financial statements together with explanations and notes thereon? Yes ___ No ___

How many hours of the applicant's time was so engaged? _____

Describe the type of work assigned to the applicant: _____

_____

10. continued-

_____

_____

_____

11. Teaching Experience

Name of Institution — Classes Taught(with dates taught

12. DIVERSIFIED ACCOUNTING EXPERIENCE

Check each of the following items in the appropriate box, also set forth the approximate percentage of time the applicant spent in each category (i.e. Auditing & Accounting, etc.). Experience obtained by the applicant must demonstrate intensive, diversified application of accounting and auditing principles and procedures.

	% of Time	Do Not Write in This Column
	_____ %	_____

A. Auditing & Accounting

( ) Review and testing of internal accounting controls.

( ) Verification of accounts receivable.

( ) Review of inventory procedures & verification of physical inventory.

( ) Testing inventory valuation and pricing.

( ) Review of client bank reconciliations.

( ) Testing fixed asset cost and depreciation.

( ) Testing prepaid, intangible & deferred charges.

( ) Review and verification of accounts payable and accruals.

( ) Search for unrecorded liabilities.

( ) Analysis and verification of changes in equity accounts or fund balances.

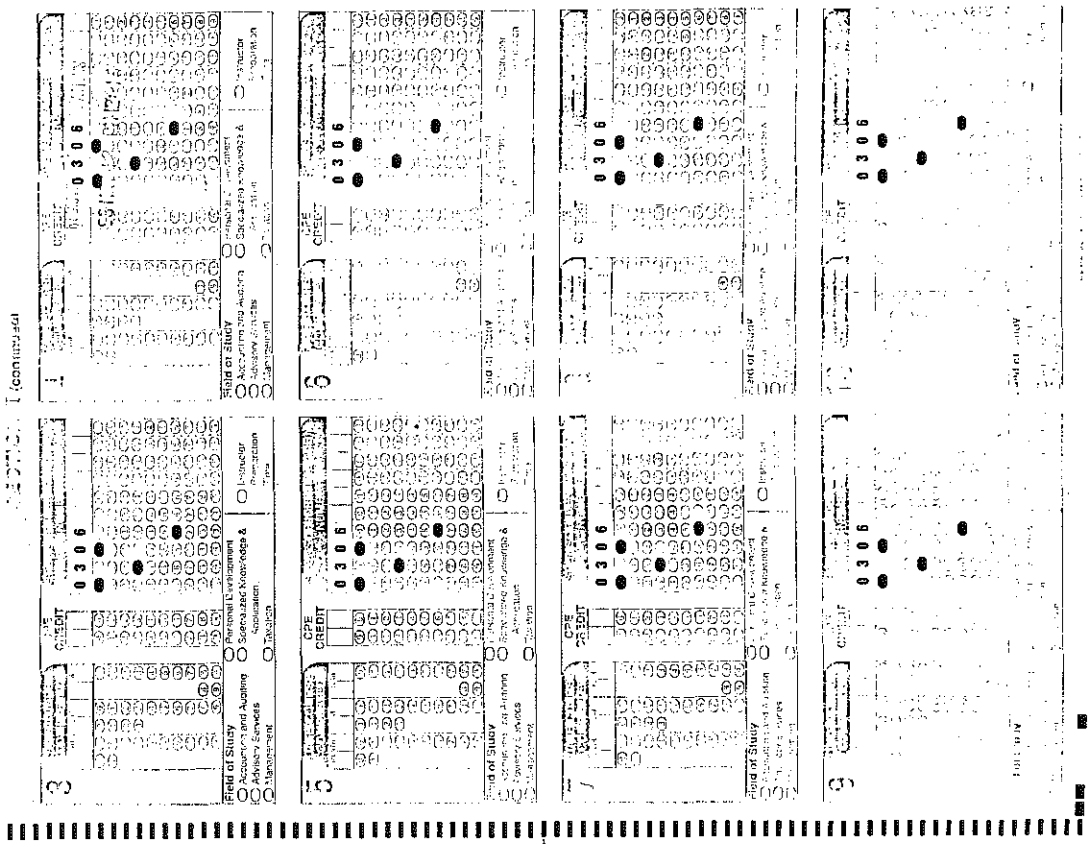
A. continued-

	% of Time	Do Not Write in This Column
( ) Application of analytical review procedures.		
( ) Testing of revenue and purchase cut-off.		
( ) Review of significant subsequent events.		
( ) Review of pertinent legal documents.		
( ) Design and use of computer audit tools.		
( ) Compilation of financial statements.		
( ) Review of financial statements.		
( ) Drafting of financial statements.		
( ) Preparation of financial statements in accordance with GAAP.		
( ) Preparation of financial plans, budgets or projections in accordance with GAAP.		
( ) Taking and evaluating physical inventories.		
( ) Preparation of trial balances, adjusting journal entries and analysis of accounts.		
( ) Maintaining books of original entry, including general ledger and subsidiary ledgers.		
B. Tax Services	_____ %	_____
( ) Preparation of income tax returns.		
( ) Preparation of payroll tax returns.		
( ) Review of financial statement tax provisions and tax accruals.		
( ) Research in tax law, tax planning for clients.		
C. Management services	_____ %	_____
( ) Design and installation of accounting, cost and other computer systems.		
( ) Other management advisory services.		

	% of Time	Do Not Write in This Column
D. Bookkeeping Services	_____ %	_____
( ) Maintaining books of original entry.		
( ) Preparation of payroll tax returns.		
( ) Posting of general and subsidiary ledgers.		
E. Other Services	_____ %	_____
Attach detailed description of work performed.		
Total	100%	
F. Government	_____ %	_____
( ) General accounting, including preparation of trial balances, analysis of accounts and preparation of financial statements.		
( ) Employment with a Government Auditor's office or internal auditing unit which includes:		
( ) Application of auditing procedures and techniques in accordance with general accepted auditing standards.	_____ %	_____
( ) Experience in preparation of audit work papers.	_____ %	_____
( ) Experience in developing audit programs and procedures.	_____ %	_____
( ) Field auditor for state tax returns.	_____ %	_____
( ) other-Attach detailed explanation of work performed.	_____ %	_____
Total	100%	
G. Internal Revenue Service		
( ) Employment as field agent	_____	_____
( ) Other-Attach detailed explanation of work performed	_____	_____

Please indicate the following information:

Grade Level	Months employed at this level
_____	_____
_____	_____



First Name ... Middle Initial ... License Number ...

SECTION II

FOR USE BY INSTRUCTORS ONLY

TITLE OF PROGRAM	DATE(S) OF SPONSOR	SPONSOR NUMBER*	FIELD OF STUDY**	TOTAL CPE CREDIT	PREPARATION TIME	PRESENTATION TIME

* Sponsor ...

** Field of Study
Use number to ...
1. Accounting & Auditing
2. Advisory Services
3. Management
4. Personal Development
5. Specialized Knowledge and Application
6. Taxation

I certify under penalty of perjury to the ... Accountants ... in this report and that all ... claimed ... contributed directly to my professional competence.

Licensee Signature ...

Print Name ...

License Number ...

Date ...

G. continued-

Grade Level	Months employed at this level
________	________
________	________

Signature of Employer

Title

Firm or Agency Name

Address

Zip

( ) Telephone Number

Affidavit:

State of ____________________

City/County of ____________________

This statement was signed and sworn before me this ___day of ____________19__.

Notary Public

My Commission expires ____________________

Instructions For Comp[illegible] Continuing Education [illegible] Form

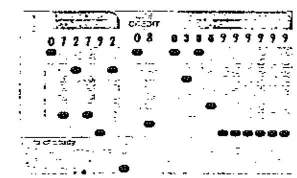
CPE Requirement

Virginia licensed CPAs must complete and maintain 120 CPE credit hours over [illegible]. A minimum of 20 CPE credit hours must be taken in each calendar year (Reg. Sec. 5.1). All CPE [illegible] reported on this form. All reported credits must be acceptable CPE (Reg. Sec. 5.4) and must [illegible] fields of study (Reg. Sec. 5.5).

Instructions – PLEASE READ CAREFULLY

1. SECTION I is designed to be computer read. Please use a #2 pencil. Print information on the top column of boxes. For each letter, fill in the oval containing the appropriate letter—only one oval per column.

2. Information for each course completed in calendar year 1992 should be contained in one of the ten numbered blocks provided. One course per block. At the right is a completed example:



Enter the date course was completed, the field of study, the total CPE credit hours [illegible] number:

- Virginia approved sponsors' 6 digit identification number should be found on the [illegible]
- Enter 8[illegible] for sponsors which are accredited [illegible]
- Enter 999999 for sponsors approved by the National Association of State Boards [illegible] (Reg. Sec. 5.4)

3. Sponsors are to provide credit hours based on a measurement of [illegible] minutes [illegible]

4. INSTRUCTORS – One block must be completed for credits [illegible] for credits claimed in preparation and the preparation time [illegible] the instructor.

5. DO NOT ATTACH SUPPORTING DOCUMENTS OR CERTIFICATES OF COMPLETION.

6. If additional blocks are required for reporting CPE credits [illegible] with the required information.

Instructions for Section II

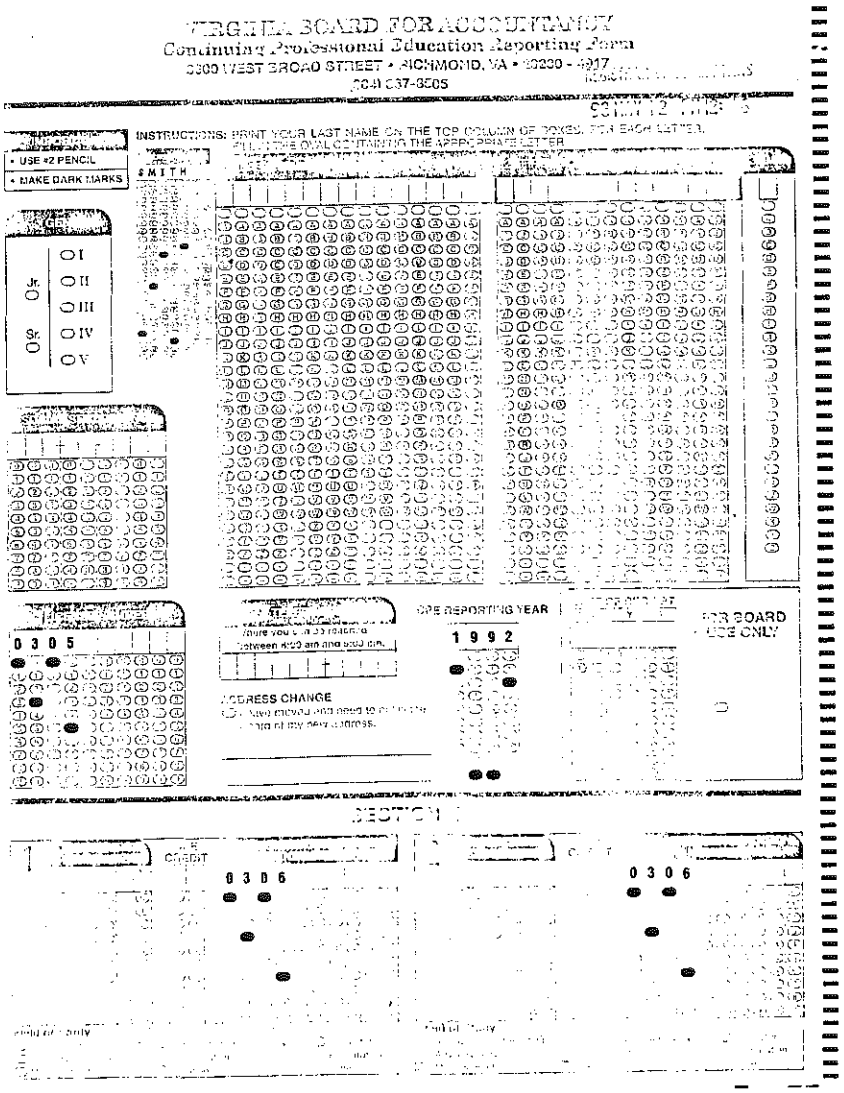
1. [illegible] each CPE [illegible]

2. [illegible]

3. [illegible]

4. [illegible]

5. [illegible]


VIRGINIA BOARD FOR ACCOUNTANCY
Continuing Professional Education Reporting Form
3600 WEST BROAD STREET • RICHMOND, VA • 23230 - 4917
(804) 367-8505
INSTRUCTIONS: PRINT YOUR LAST NAME ON THE TOP COLUMN OF BOXES, FOR EACH LETTER,
FILL IN THE OVAL CONTAINING THE APPROPRIATE LETTER.
• USE #2 PENCIL
• MAKE DARK MARKS
SMITH
Jr.
Sr.
I
II
III
IV
V
0305
CPE REPORTING YEAR
1992
FOR BOARD USE ONLY
ADDRESS CHANGE
SECTION I
CREDIT
0306
0306

GOVERNOR'S EMPLOYMENT AND TRAINING DEPARTMENT

REGISTRAR'S NOTICE: The following regulations filed by the Governor's Employment and Training Department are exempted from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) in accordance with § 9-6.14:4.1 B 4 of the Code of Virginia, which exempts agency actions relating to grants of state or federal funds or property. The regulations are being published for informational purposes only.

Title of Regulation: **VR 350-01-2. Management Requirements for Job Training Partnership Programs and Activities (REPEALED).**

Statutory Authority: § 2.1-708 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The Job Training Partnership Act (JTPA) was enacted in 1982 principally to establish a new program and delivery system for training and related assistance for economically disadvantaged youth and adults leading to permanent, private sector employment. The enactment of the Job Training Reform Amendments of 1992 (P.L. 102-367) substantially revised the structure of the program. The nature of the Reform Amendments also resulted in greater focus on administrative and financial requirements in the federal regulations implementing JTPA

Following analysis of the amendments and federal regulations, it was determined that extensive revisions to the structure, organization, and content of the state requirements would be required. Due to the extent of necessary revisions, "VR 350-01-2, Management Requirements for Job Training Partnership Program and Activities" will be repealed and new regulations issued.

* * * * * * * *

Title of Regulation: **VR 350-01-3. JTPA Requirements.**

Statutory Authority: § 2.1-708 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The JTPA Requirements establish standards for Job Training Partnership Act (JTPA) programs for the administration and operation of employment and training programs. These standards are consistent with the federal regulations issued by the U. S. Department of Labor.

Part I establishes general definitions used in the JTPA Requirements and addresses on-going evaluation of the JTPA Requirements. Parts II, III and IV incorporate guidance on administrative, fiscal, and audit responsibilities. Part II, General Provisions, identifies the applicability of state law to participant activity. This section also addresses activities prohibited in federal regulations and the assignment of liability for JTPA funds.

Part III, Administrative Requirements, includes standards for financial management and procurement activities. These standards are based on the minimum requirements set forth in regulations of the Department of Labor. Part IV, Audit Requirements, identifies the parameters for the method and frequency of audits as well as the process for audit resolution. The audit requirements established for JTPA funds are specified in the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" as well as the federal JTPA regulations.

Part V addresses responsibilities under the Equal Opportunity/Affirmative Action that are contained in the regulations of the Department of Labor and of its Directorate of Civil Rights. Part VI specifies the grievance process which has been established by the Department of Labor for JTPA complaints.

VR 350-01-3. JTPA Requirements.

PART I.
DEFINITIONS AND EVALUATION.

§ 1.1. Definitions.

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

"Contractor" means a person, entity or organization who receives JTPA funds from an SDA to provide services or training or both to participants. The term shall include entities which receive funds and are deemed to be employers of participants, or who provided customized training to participants who, upon successful completion of that training, are employed by the entity in accordance with an agreement with the SDA.

"DOL" means the United States Department of Labor.

"EDWAA" means the Economic Dislocation and Worker Adjustment Assistance Act. EDWAA amends Title III of JTPA.

"GETD" means the Governor's Employment and Training Department.

"GJTCC" means the Governor's Job Training Coordinating Council.

"JTPA" means the Job Training Partnership Act, Public Law 97-300, as amended.

"PIC" means the Private Industry Council established in each service delivery area.

"SDA" means the administrative entity, the grant recipient, the PIC, and the local elected officials that cooperatively manage the JTPA Title II programs and activities in a geographic area which has been designated by the Governor as a service delivery area. For the purposes of these regulations, the term "SDA" shall also include the substate grantee which administers the Title III program.

§ 1.2. Purpose and authority.

These regulations are promulgated by the Governor's Employment and Training Department pursuant to the authority granted by § 2.1-708 of the Code of Virginia. These regulations supplement the requirements of the Job Training Partnership Act (PL 97-300), as amended by the Job Training Reform Amendments of 1992 (PL 102-367) and the Economic Dislocation and Worker Adjustment Assistance Act (PL 97-300, as amended) and the implementing regulations issued by the United States Department of Labor. Therefore, these regulations must be read in concert with the Job Training Partnership Act, as amended, the Economic Dislocation and Worker Adjustment Assistance Act, as amended and the regulations (20 CFR Parts 626 through 631) of the United States Department of Labor.

§ 1.3. Evaluation of regulations.

A. The GETD will evaluate the effectiveness of these regulations on an on-going basis. Interested parties are invited to submit comments and recommendations concerning the regulations to the Research, Policy and Evaluation Unit of the GETD.

B. Every two years following the adoption of these regulations, the GETD will provide for and announce a procedure to review, evaluate, and, as necessary, amend these regulations. The procedure will include a process by which the public will be invited to recommend, in writing, revisions to the regulations and will be afforded an opportunity to review and comment on any proposed revisions.

§ 1.4. Conflicts and severability.

Any provision contained in these regulations which is found to be unlawful or is superseded by action of DOL shall be severable from the remaining provisions.

§ 1.5. Identification of SDA requirements.

If an SDA imposes a requirement relating to the administration and operation of programs funded by the Act, the SDA shall identify the requirement as an SDA-imposed requirement. If an SDA imposes a requirement based on the SDA's interpretation of any federal law, regulation, or guideline or any state regulation, policy or guideline, the SDA shall identify the requirement as an SDA-imposed requirement.

PART II.
GENERAL PROVISIONS.

§ 2.1. Applicability of state laws.

With respect to placement of participants in work training situations, SDAs, contractors and agencies administering JTPA participant activities shall be guided by:

1. The standards contained in the Occupational Safety and Health Standards for General Industry (29 CFR Part 1910) inclusive of the "Virginia Preface to OSHA Standards Book for General Industry";

2. Virginia Child Labor Laws as contained in Chapter 5 (§ 40.1-78 et seq.) of Title 40.1 of the Code of Virginia; and

3. Virginia Worker's Compensation Act as contained in Title 65.2 of the Code of Virginia.

§ 2.2. Clarification of JTPA and related regulations.

A. Pursuant to the agreement for the implementation of JTPA between the Governor of Virginia and the U. S. Secretary of Labor, the GETD shall, at its discretion, issue guidelines for JTPA programs and interpretations of JTPA and related regulations and issuances by DOL. These guidelines and interpretations shall be issued as "GETD policy" and shall provide guidance on implementation of JTPA activities to SDAs, contractors and agencies administering JTPA funds.

B. Periodically, DOL issues Training and Employment Information Notices and Training and Employment Guidance Letters to provide guidance on the implementation of JTPA. The GETD will, as appropriate, provide copies of these issuances to SDAs and state agencies administering JTPA funds. Guidance provided in these documents will be incorporated into GETD policy as appropriate.

§ 2.3. Relocation.

The GETD will promptly review and take appropriate action, including consultation with and referral to DOL, with regard toalleged violations of the provisions of paragraphs (a) and (b) of § 627.215 (Relocation) of the DOL regulations which prohibit the use of JTPA funds to encourage or induce the relocation of any part of an establishment. If the GETD determines that a violation has occurred, the GETD shall require the SDA that has violated the provisions to:

1. Repay an amount equal to the amount expended in violation of the prohibition; and

2. Pay an additional amount equal to the amount required to be repaid under subdivision 1 of this section, unless the SDA demonstrates that it neither knew nor reasonably could have known (after an inquiry undertaken with due diligence) that it provided funds in violation of the prohibition.

§ 2.4. Displacement.

The GETD will promptly review and take appropriate action, including consultation with and referral to DOL, with regard to alleged violations of the prohibitions against displacement of current workers or of terminated or laid off workers.

§ 2.5. Nepotism.

A. The following words and terms, for the purpose of this section, shall have the following meaning:

"Employ" means to hire, or to provide with a job that pays wages or a salary.

"Immediate family" means a person's spouse and any other relative, by blood, marriage (including step-children and step-parents) or adoption, who resides in the person's household.

"Person in administrative capacity" means a person having overall administrative responsibility, and a person having election, hiring, placement or supervisory responsibilities. It also includes a member of a public or private governing board or council which has oversight responsibilities.

B. The GETD shall not employ a person in a position funded in whole or in part under JTPA if a member of that person's immediate family is engaged in an administrative capacity for the GETD.

C. An SDA shall not employ a person in a position funded in whole or in part under JTPA if a member of that person's immediate family is engaged in an administrative capacity for that SDA.

D. An SDA contractor shall not employ a person in a position funded in whole or in part under JTPA if a member of that person's immediate family is engaged in an administrative capacity for the contractor.

§ 2.6. Responsibilities for reporting incidents of fraud and abuse.

Any known or suspected incidents of fraud, waste, malfeasance, misapplication of funds, gross mismanagement, or other criminal acts in programs and activities which are funded, in whole or in part, by JTPA shall be immediately and directly reported to the DOL Office of Inspector General and the Executive Director of the GETD. Any act, information or complaint which raises questions concerning possible illegal expenditures, or other unlawful activities shall be immediately and directly reported to the DOL Office of Inspector General and the Executive Director of the GETD.

§ 2.7. Right to review and require corrective action.

The GETD reserves the right to review all actions, procedures and materials submitted, implemented, or utilized in the implementation of JTPA programs and to require modifications or amendment to bring those actions, procedures, and materials into compliance with the requirements of JTPA, DOL regulations, GETD regulations, applicable guidance and other related laws.

§ 2.8. Failure to comply.

Failure to comply with the provisions of JTPA, DOL regulations, and these regulations may result in loss of funding or the imposition of sanctions.

§ 2.9. Sanctions.

If, as a result of financial and compliance audits or failure to meet performance standards, the GETD determines that there is a substantial violation of a specific provision of JTPA, the DOL regulations or the GETD regulations, and that corrective action has not been taken, the SDA shall be subject to sanctions. Sanctions may include:

1. Issuance of a notice of intent to revoke approval of all or part of the plan affected;

2. Imposition of a reorganization plan; or

3. Any other such changes as are determined necessary to secure compliance or attainment of performance standards.

§ 2.10. Liability for JTPA funds.

The GETD shall hold SDAs responsible for JTPA funds received through grants and contracts, and may ultimately hold the units of local government which constitute the service delivery area responsible for such funds.

PART III.
ADMINISTRATIVE REQUIREMENTS.

§ 3.1. Financial management and accounting standards.

A. Each SDA shall maintain written fiscal and accounting procedures that will present fairly and with full disclosure its financial position and the results of its financial operation. The procedures shall be in conformity with generally accepted accounting principles and shall enable the users of financial reports to determine compliance with legal and contractual provisions.

B. SDAs and their contractors shall develop a system of written fiscal controls and accounting procedures which ensure compliance with JTPA regulations, policies, and guidance. Such procedures shall, at a minimum, include the following:

1. Effective internal controls to safeguard assets and assure their proper use;

2. Methods to produce information pertaining to subgrant and contract awards, obligations, unobligated balances, assets, expenditures, and income;

3. Methods to compare actual expenditures with budgeted amounts for each subgrant and contract;

4. Requirements to maintain source documentation which support accounting records;

5. Methods to ensure proper charging of costs and cost allocation; and

6. Methods to demonstrate compliance with the matching requirements.

C. At a minimum, standards of internal control must assure the following:

1. Competent key personnel;

2. Qualified supervision with clear line of responsibility and accountability;

3. Properly recorded and executed transactions;

4. Clear documentation of and accountability for resources and financial transactions;

5. Proper segregation of duties; and

6. Limitation in access to resources.

§ 3.2. Administrative requirements.

A. Annually, each SDA shall notify the GETD of the identity of the officers or officials authorized to bind that SDA to agreements with the GETD or to request funds pursuant to such an agreement. This notification shall be made in accordance with instructions issued by the GETD.

B. Each SDA shall identify an individual to be principal contact for the accounting and fiscal operations. The name, title, and telephone number of this individual shall be provided to the GETD fiscal unit.

C. SDAs shall ensure that their contractors adhere to all applicable federal and state laws and regulations, and to state and SDA procedures for the operation of JTPA programs. SDAs shall ensure that each contractor has timely access to materials bearing on the administration of and performance under the contract.

§ 3.3. Bonding.

A. Every officer, director, agent or employee of an SDA which receives JTPA funds in advance of expenditure, who is authorized to act on the SDAs behalf for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs shall be bonded to provide protection against loss. The minimum amount of coverage shall be the lower of:

1. $100,000, or

2. The highest advance during the previous program year.

B. SDAs shall ensure that contractors which receive payment in advance of performance or expenditure obtain adequate bonding against loss.

§ 3.4. Liability for damages, losses and claims.

The GETD assumes no liability with respect to bodily injury, illness, or any other damage or losses, or with respect to any claims arising out of any activity under a JTPA contract or agreement whether concerning persons or property in the SDA's, state agency's, contractor's, or any other subrecipient's organization or any third party.

§ 3.5. Procurement standards.

A. SDAs which do not operate within the control of a unit of local government shall establish and maintain a written procurement system and attendant procedures which are in compliance with the provisions of the Virginia Public Procurement Act as specified in the GETD Procurement Manual and these regulations.

B. SDAs which operate within the control of a unit of local government shall adhere to local government procurement policies and procedures.

C. No JTPA funds shall be used to duplicate existing facilities and services, except in those cases where it is demonstrated that the JTPA funded alternatives would be more effective and more likely to achieve required performance goals.

D. The personnel of each SDA, to include PIC members, must avoid organizational conflict of interest, personal conflict of interest, and the appearance of conflict of interest when carrying out their responsibilities under the JTPA. SDAs shall develop and maintain a written code of standards governing the performance of persons engaged in the award and administration of JTPA contracts and subgrants. The code shall, at a minimum, encompass the requirements of § 627.420(c) of the DOL regulations. SDAs may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

E. SDAs shall monitor all procurement activities on an annual basis and report this information to the GETD as part of their monitoring function. The GETD shall monitor the SDA procurement process to ensure compliance.

§ 3.6. Standards for selection of service providers.

A. SDAs, to the extent practicable, shall select service providers on a competitive basis, in accordance with the standards established in § 627.420(b) of the DOL regulations and § 3.4 of these regulations. When an SDA determines that services will be provided by its own staff, a determination shall be made of the demonstrated performance of the staff to operate the program. This determination shall be in writing and evaluate the SDA on the items listed in subsection C of this section.

B. SDAs shall complete determinations of demonstrated performance in writing prior to the award of a grant, subgrant, contract or subcontract.

C. Awards are to be made to organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Such determinations shall be in writing and shall, at a minimum, assess whether the organization has:

1. Adequate financial resources or the ability to obtain them;

2. The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;

3. A satisfactory record of past performance (in job training, basic skills training, or related activities), including demonstrated quality of training; reasonable drop-out rates from past programs; the ability to provide or arrange for appropriate supportive services as specified in the Individual Service Strategy, including child care; retention in employment; and earning rates of participants;

4. For Title II programs, the ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;

5. A satisfactory record of integrity, business ethics, and fiscal accountability;

6. The necessary organization, experience, accounting and operational controls; and

7. The technical skills to perform the work.

D. In selecting service providers to deliver services in an SDA, proper consideration shall be given to community-based organizations which are recognized in the community in which they are to provide services.

Appropriate education agencies in the SDA shall be provided the opportunity to provide educational services, unless the SDA demonstrates, in writing, that an alternative agency or organization would be more effective or would have greater potential to enhance the participants' continued educational and career growth.

In determining demonstrated performance of institutions and organizations which provide training, such performance measures as retention in training, training completion, job placement, certifiable training and rates of licensure shall be taken into consideration.

§ 3.7. Standards for OJT contracts.

A. SDAs and their subcontractors shall not enter into or otherwise extend On-the-Job Training Contracts with employers when the following conditions exist:

1. The employer had two or more OJT contracts within the preceding 12 months, and exhibited a pattern of failing to provide OJT participants with continued long-term employment (at least six months) as regular employees with wages and working conditions at the same level and to the same extent as similarly situated employees;

2. The employer provided wages and benefits received by the OJT participant were not at the same level as other employees similarly employed; or

3. The employer terminated OJT participants without cause.

B. SDAs and their subcontractors are required to monitor OJT contracts to ensure that the employer meets the requirements specified above.

§ 3.8. Cost principles.

To be allowable, a cost shall be necessary and reasonable for the proper and efficient administration of the program, be allocable to the program, and not be a general expense required to carry out the overall responsibilities of a governmental subrecipient. Costs charged to the program shall be accorded consistent treatment through application of generally accepted accounting principles. A cost is reasonable if, in its nature and amount, it does not exceed that which a prudent person would accept under the circumstances prevailing at the time the decision was made to incur the cost. In considering the reasonableness of a given cost, consideration should be given to:

1. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the JTPA program;

2. The restraints or requirements imposed by such factors as sound business practices, arms length bargaining, federal, state and other laws and

regulations, and terms and conditions of the JTPA awards;

3. Market prices for comparable goods and services;

4. Whether the individuals concerned acted with prudence the circumstances considering their responsibilities to the organization, its employees, the public at large and the federal government; and

5. Significant deviations from the established practices of the subrecipient organization which may unjustifiably increase the federal award's cost.

§ 3.9. Allowable cost.

A. The following provides direction on allowable costs. Since this list is not all inclusive, GETD fiscal staff should be consulted if there is any question concerning the allowability of a specific cost item.

1. Accounting costs for establishing and maintaining accounting and other information systems required for the management of the JTPA program including the costs of identifiable services incurred by central service agencies when used for JTPA purposes;

2. Advertising costs to include newspapers, radio and television programs, direct mail, and trade papers. The advertising costs which are allowable are those which are solely for the recruitment of personnel required for the grant program, solicitation of bids for the procurement of goods and services required, disposal of surplus materials acquired in the performance of the grant agreement, and the outreach and recruitment of participants;

3. Audit services necessary for the administration and management of functions related to the JTPA program including costs of the required annual single audit;

4. Bonding costs for premiums on bonds covering employees who handle subrecipient funds;

5. Budgeting costs incurred for the development, preparation, presentation, and execution of budgets. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the subrecipient's budget process, the cost of the identifiable services is allowable;

6. Building space costs including rent and repairs in privately or publicly owned buildings used for the benefit of the JTPA program. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in the same locality. Maintenance and operation costs including utilities, insurance, security, janitorial services, elevator services, upkeep of grounds, and normal repairs to the extent that they are not otherwise included in rental or other charges for space are allowable;

7. Communication costs incurred for telephone calls or service, teletype service, wide area telephone service, centrex, telpak, telefax, postage, messenger service, and similar expenses when used in support of JTPA activities;

8. Compensation in the form of depreciation and use allowances for the use of buildings, other capital improvements, and equipment on hand. Use allowances are the means of providing compensation in lieu of depreciation. The computation of use allowances or depreciation or both must comply with the guidelines contained in the appropriate OMB circular (OMB Circular A-87 for State and Local Governments, A-122 for Private Nonprofit Organizations, and A-21 for Educational Institutions) regarding the allowability of such costs;

9. Fees or profits which are determined through procurement to be reasonable and not excessive;

10. Insurance costs for coverage of injuries suffered by participants who are not covered by existing workers' compensation, personal liability insurance for PIC members, and other required insurance coverage to the degree that the types and extent and cost of coverage is in accordance with general local policy and general business practice;

11. Interest expense, paid to an external party, associated with the acquisition of capital equipment if such assets are used to support the JTPA program and the total costs are less than $1,000 per unit, including property acquired through lease/purchase agreements and lease agreements with aggregate payments under $1,000;

12. Legal expenses required in the administration of the JTPA program, such as expenses incurred by the JTPA system in the establishment and maintenance of a grievance system, including hearings and appeals, and related expenses such as lawyers' fees. Expenses for services furnished by the chief legal officer of a state or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are not allowable. Legal expenses for the prosecution of claims against the federal government, including appeals to an Administrative Law Judge, are also unallowable;

13. Memberships, subscriptions, and professional activities, including staff training, which support and enhance the management and operation of JTPA activities;

14. Participant support services including needs-based payments determined in accordance with locally

developed formula and, for youth enrolled in Title II-C programs, cash incentives and bonuses;

15. Payments to OJT employers, training institutions and other vendors incurred for training and employment services to eligible JTPA participants;

16. Personal services compensation, including wages, salaries, supplementary compensation and fringe benefits for staff engaged in activities supporting JTPA;

17. Preagreement costs incurred prior to the effective date of a subgrant or contract when specifically provided for in the subgrant or contract;

18. Printing and reproduction services necessary for grant administration including but not limited to forms, reports, manuals, and informational literature;

19. Costs incurred by private industry councils which are established pursuant to the JTPA regulations and other advisory councils established to facilitate the provision of job training and related services;

20. Professional services rendered by individuals or organizations not a part of the SDA, including organizational management studies conducted by outside individuals or firms;

21. Supplies, equipment and materials for use by participants while on the job and for the use in the training of participants;

22. Taxes or payments in lieu of taxes which the JTPA subrecipient is legally required to pay;

23. Travel costs for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to the JTPA program; and

24. Transportation costs incurred for freight, cartage, express, postage and other transportation costs relating to either goods purchased, delivered, or moved from one location to another.

B. The following costs are allowable with prior approval from the GETD:

1. Alterations, building reconstruction and remodeling of facilities required specifically for the JTPA program;

2. Acquisition of capital assets;

3. Fund raising costs; and

4. Purchase or disposal of property having an acquisition cost of $1,000 or more per unit, including property acquired through lease/purchase agreements and lease agreements with aggregate payments exceeding $1,000.

C. In addition to the costs specified in § 627.435(e) of the DOL regulations, the following costs are not allowable:

1. Interest incurred on borrowed working capital or on the use of an organization's own funds, and

2. International travel.

§ 3.10. Cost categories.

A. Funds expended under Title II-A and Title II-C shall be charged to one of the following categories:

1. Administration;

2. Direct training services; and

3. Training related and supportive services.

B. Funds expended under Title II-B shall be charged to one of the following categories:

1. Administration; or

2. Training and participant support.

C. Funds expended under Title III shall be charged to one of the following categories:

1. Administration;

2. Rapid response services;

3. Retraining services;

4. Basic readjustment services; and

5. Needs-related payments and supportive services.

§ 3.11. Cost limitations.

A. Of the funds provided to an SDA under Title II-A and Title II-C:

1. Not more than 20% shall be expended for administration, with the exception of administrative costs incurred by a community-based organization or nonprofit organization. Administrative costs incurred by these organizations shall not be included in the 20% administration limitation if the conditions described in § 627.445(d) are met.

2. Not less than 50% of the allocation shall be expended for direct training services, except as provided for in subdivision 1 of this subsection.

B. Of the funds provided to an SDA under Title II-B,

exclusive of any funds transferred to Title II-C in accordance with § 256, not more than 15% shall be expended for administration.

C. The limitations of costs Title II-A, Title II-B and Title II-C shall be applied separately to funds allocated under each program and shall be based on the net of any:

1. Transfers made in accordance with §§ 206, 256 and 266 of the Act; and

2. Reallocations made by the GETD in accordance with § 109(a) of the Act.

D. Of the funds allocated to an SDA under Title III:

1. Not more than 15% of the allocation shall be expended on administrative costs;

2. Not more that 25% of the allocation shall be expended on needs-related payments and supportive services; and

3. Except as provided below, not less than 50% of the allocation shall be expended for retraining services.

a. SDAs may request a waiver from the requirement to expend 50% of the allocation for retraining. Waivers may be used to increase the level of expenditure for basic readjustment services and to decrease retraining expenditure.

b. In no case will a waiver increase the availability of funds for expenditure in the categories of administration and needs-related payments and supportive services. Additionally, a waiver may not reduce the minimum limitation on retraining services below 30%.

§ 3.12. Financial reports.

SDAs shall submit the following financial reports to the GETD:

1. Cash forecast report submitted monthly;

2. Cash management report submitted monthly;

3. Quarterly expenditure report submitted on or before the last day of the month immediately following the end of quarter;

4. Preliminary closeout package submitted within thirty 30 days following the close of the contract; and

5. Final closeout package submitted within 60 days following the close of the contract.

§ 3.13. Maintenance and retention of records.

A. Except as provided in this section, SDAs shall retain JTPA records, including financial, statistical and participant information, and supporting documentation for a period of three years. The retention period shall begin on the date of submission of the final expenditure report for the particular grant or program.

1. If, prior to the expiration of the retention period, any litigation or audit is begun or a claim is instituted involving the grant covered by the records, the SDA shall retain the records beyond the three-year period until the litigation, audit finds or claim has been finally resolved.

2. All records for nonexpendable property shall be retained for three years after the final disposition.

B. In the event of the termination of an agreement or contract, SDAs shall be responsible for ensuring that appropriate arrangements are made for the retention of records.

C. Upon written request by the GETD, SDAs shall transfer JTPA records to GETD custody. The request will be made when the GETD determines that such records possess long-term retention value or are needed for audit or compliance purposes or both.

§ 3.14. Access to records.

The GETD and any of its authorized representatives have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of recipients and subrecipients that are pertinent to the grant, in order to conduct audits and examinations, and to make excerpts, transcripts, and photocopies of such documents. This right also includes timely and reasonable access to SDA and SDA contractor personnel for the purpose of interview and discussion related to such documents. The right of access is not limited to the required retention period but shall last as long as the records are retained.

§ 3.15. Participant records.

A. The GETD shall maintain an automated system for collection of data on applicants for and participants in JTPA programs and activities. SDAs not using the GETD system must utilize an automated system which is compatible with the system maintained by the GETD. The GETD retains the right to approve automated participant record systems utilized by SDAs.

B. SDAs shall establish and adhere to procedures to ensure that data is entered to the automated system accurately and completely and in a timely manner.

C. The GETD will provide off-site storage for data collected. Each SDA shall submit, according to instructions from the GETD, data to the GETD.

PART IV.

AUDIT REQUIREMENTS.

§ 4.1. Frequency of audits.

Annual audits will be conducted based on availability of administrative funds. Should funds not be available for annual audits, audits will be performed at least once every two years as directed by the GETD. The GETD reserves the right to audit or to require the audit of any or all of the SDAs as the need is determined.

§ 4.2. Audit method.

A. A single audit firm shall be selected to audit the SDAs. The firm shall be selected by the GETD in consultation with the SDAs. Each audit shall be conducted in accordance with the standards set forth in JTPA § 164(a). Audits conducted under Office of Management and Budget Circular A-128 or Circular A-133 may be accepted as a part of unified audits. Copies of A-128 and A-133 audit reports shall be submitted, upon availability, to the GETD.

B. SDAs are responsible for the cost of the audit related to the expenditure of funds by the SDA and must ensure that all of their contractors audit JTPA funds, unless A-128 and A-133 audits are performed.

C. Neither the GETD nor the SDAs shall audit state agencies receiving JTPA funds which are audited through the normal state audit process if the state audit includes financial and compliance testing that meet JTPA standards. If the state audit does not include JTPA funds, the state agency's JTPA programs shall be included in the unified audit.

D. State agencies which receive JTPA funds directly from the GETD shall be responsible for ensuring that the expenditure of those funds is audited. They shall be responsible for all audit fees, whether associated with state, unified, or individual audits and for audit resolution in accordance with the processes outlined below.

§ 4.3. Audit responsibilities.

A. SDAs and state agencies responsible for audits must immediately notify, in writing, the GETD of possible acts of fraud discovered during the performance of an audit.

B. The Virginia Auditor of Public Accounts shall determine the acceptability of the A-128 audit reports.

§ 4.4. Audit resolution.

A. The GETD fiscal section in conjunction with the GETD monitoring section is responsible for ensuring that SDAs and other JTPA subgrantees are in compliance with the audit requirements. The GETD will utilize an audit tracking system to document and monitor the audit resolution process. The tracking system lists the date when the final audit report is received by the GETD, the number of administrative findings; the amount of questioned costs and the amount of cost recommended for disallowance; the date of the final determination; the amount of the final disallowed costs; and a section for comments or appeals information.

B. The GETD, within 30 days of the receipt of a final audit report, will review the report and forward an initial finding letter to the subgrantee. The initial letter lists all of the audit findings (Questioned Costs and Administrative Findings) identified in the report.

C. Within 30 days from receipt of the initial finding letter, the SDA shall prepare and submit a written response. The written response shall include any documentation needed to support questioned costs or costs recommended for disallowance; an explanation of any corrective actions taken or a plan for future corrective action; and any documentation to verify that corrective action has been taken or a timetable for the completion of the corrective action.

D. The GETD shall review the SDA's written response within 60 days following the receipt of the response. A determination regarding the adequacy of the action taken by the SDA to resolve the findings will be made. In order to make the determination, the GETD may request additional action on any finding considered not fully resolved. If the corrective action plan is determined adequate and acceptable a final determination will be issued.

E. The final determination will:

1. Indicate that the responses to the administrative findings are acceptable to the GETD;

2. List any costs which have been determined allowable or unallowable; and

3. Establish a debt for any disallowed costs and designate a date by which repayment, if any, must be made.

F. The GETD monitoring staff will follow-up on audit resolution corrective actions, when deemed appropriate, during the next on-site monitoring visit. The monitors, if necessary may require additional actions to be taken to ensure compliance with the approved audit corrective action plan.

G. The determination by any agency to allow questioned costs does not preclude the Secretary of DOL from making a determination that the costs are unallowable and demanding a refund from nonfederal funds. Consequently, a determination of allowability of costs shall not be final until accepted by DOL.

§ 4.5. Disallowed costs.

Any costs disallowed shall be the sole responsibility of

the SDA or state agency. In the event it is determined that disallowed costs require repayment, repayment shall be made by the SDA or state agency, upon request by the GETD, out of nonfederal funds.

§ 4.6. Appeal of final determination.

A. SDAs shall afford subrecipients the opportunity to appeal the final determination of disallowed costs. SDAs and other grantees have the right to appeal the GETD's final determination of disallowed costs. To be considered, an appeal shall be filed not less than 15 days nor more than 30 days, after the issuance of the final determination. Appeals shall be filed pursuant to the GETD grievance procedures specified in Part VI of these regulations.

PART V.
EQUAL OPPORTUNITY/AFFIRMATIVE ACTION.

§ 5.1. Federal equal opportunity laws and regulations.

Programs and activities funded or otherwise financially assisted in whole or in part under the Job Training Partnership Act (JTPA) are subject to federal equal opportunity (EO) laws and regulations. Recipients of federal funds under JTPA must comply with the EO requirements that have evolved from the following:

1. Civil rights laws prohibiting discrimination on the grounds of:

a. Race, color, and national origin (Title VI, Civil Rights Act of 1964, as amended)

b. Age (Age Discrimination Act of 1975, as amended)

c. Disability (Rehabilitation Act of 1973, as amended)

d. Sex (Title IX Education Amendments of 1972, as amended);

2. JTPA's § 167 which describes the Act's civil rights coverage on the grounds of religion, political affiliation or belief, and for beneficiaries, citizenship and participation in JTPA;

3. Implementing regulations, specifically:

a. 29 CFR Part 31, Title VI of the Civil Rights Act;

b. 29 CFR Part 32, § 504 of the Rehabilitation Act;

c. 41 CFR Part 60-3, Uniform Guidelines on Employee Selection Procedures; and

d. 29 CFR Part 34, JTPA;

4. State's Methods of Administration (MOA); and

5. DOL Directorate of Civil Rights and state policy directives.

§ 5.2. Other federal laws.

Other federal laws that impact the operations of state and local level JTPA programs include, but are not limited to, the following:

1. Immigration Reform and Control Act of 1986;

2. Title VII, Civil Rights Act of 1964, as amended;

3. Equal Pay Act;

4. Age Discrimination in Employment Act; and

5. Americans with Disabilities Act of 1990.

§ 5.3. Equal opportunity program.

Consistent with the legal and regulatory requirements of JTPA and Virginia's JTPA Methods of Administration (MOA), each SDA and any other recipient shall establish and maintain a comprehensive equal opportunity program throughout their respective JTPA-funded programs and activities to include written policies and procedures governing all aspects of employment and employment practices.

§ 5.4. Compliance.

SDA's and any other recipients shall ensure compliance with GETD's equal opportunity and related policies, procedures, and administrative directives and the state's Methods of Administration to include, but not limited to, the following:

1. Designation of an equal opportunity officer;

2. Development of a system of EO policy communication and staff training to ensure that all staff are aware of and can implement their related responsibilities;

3. Compliance assurance with the nondiscrimination and equal opportunity laws and regulations included in plans, contracts, and other similar agreements to carry out JTPA-funded programs;

4. Establishment of a plan or plans describing efforts to provide equitable services to substantial segments of the population eligible for participation in JTPA;

5. Administration of JTPA-funded programs and activities to ensure physical as well as programmatic accessibility to individuals with disabilities, that programs are provided in the most integrated environment appropriate to the qualified individual with disability, and that communications with individuals with disabilities are as effective as

communications with others;

6. Collection and maintenance of EO data and provision of reports on applicants, eligible applicants, participants, terminees, employees and applicants for employment. Such information shall be maintained in a manner as to ensure confidentiality and shall be used only for recordkeeping and reporting, determining applicant eligibility, determining program compliance with nondiscrimination requirements, or other use as authorized by JTPA's nondiscrimination and equal opportunity provision;

G. Development of a system for monitoring local program operations to ensure compliance with the nondiscrimination and equal opportunity provisions of the Act;

8. Compliance with and publication of the JTPA Discrimination Complaint Procedures established by GETD and maintenance of a log of discrimination complaints. Recipients shall promptly notify GETD of any complaints, administrative enforcement actions or lawsuits filed against it alleging discrimination; and

9. Establishment of procedures for obtaining prompt corrective action or, as required, application of sanctions when a service provider is not in compliance with the nondiscrimination and equal opportunity provisions of the Act, related regulatory requirements, and state and local policies, procedures, and administrative directives.

§ 5.5. EO officers.

A. EO officers shall report directly to the highest level JTPA official on matters related to EO and shall be provided the opportunity to attend at least one EO related workshop, seminar, or conference per program year.

B. EO officers shall coordinate local level JTPA/EO responsibilities to include ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of JTPA.

C. Service providers shall not be required to designate an EO officer. SDAs may require that a service provider designate an individual responsible for publicizing discrimination complaint procedures, ensuring that the established procedures are followed, and serving as liaison with the SDA.

PART VI.
GRIEVANCE PROCEDURES.

§ 6.1. Program complaints.

A. Pursuant to PL 99-570, § 144; § 2.1-708(3) of the Code of Virginia; and DOL regulations §§ 627.500 through 637.504, the GETD shall maintain the JTPA Program Complaint Procedure for addressing any grievance or complaint alleging a violation of the JTPA rules, regulations, grants, or other agreements made under the Act by the Commonwealth of Virginia, its service delivery areas, other recipients, or service providers. The procedure shall also be available for the resolution of issues arising from audit disallowances and findings, investigations, monitoring reports, or the imposition of any sanction made, conducted, or imposed by the GETD.

B. Each JTPA recipient shall comply with the JTPA Program Complaint Procedures established by the GETD for resolving complaints and grievances arising in connection with JTPA programs operated by the SDA or any other recipient.

C. Any employer, including private-for-profit, who is a recipient of JTPA funds, shall continue to operate or shall establish and maintain for JTPA participants, a grievance or complaint procedure relating to the terms and conditions of employment available to participants. The employer's procedure shall incorporate a process of review by the SDA or any other recipient of the final decision and opportunity for the grievant to appeal to GETD. An employer may utilize their complaint system or the Commonwealth of Virginia, JTPA Program Complaint Procedures. SDAs shall inform participants which grievance procedure to follow when the participant begins employment and shall maintain documentation indicating signed notification with the participant's file.

D. Grievances and complaints which do not fall within the purview of § 4.1 are not subject to this procedure and include:

1. Allegations of irregularities in the procurement of goods and services;

2. Allegations of a violation of the nondiscrimination and equal opportunity provisions of JTPA on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, citizenship or participation in programs funded under the JTPA; and

3. Issues related to the terms and conditions of employment for GETD employees, and for participants, except when an employer of participants, including a private-for-profit employer, does not have a grievance or complaint procedure established.

E. Where the alleged violation of the Act or regulations is also an alleged violation of another law, regulation, or agreement, nothing in the JTPA Program Complaint Procedures shall preclude an individual or organization from instituting a civil action or pursue other remedies under such other law or agreement with respect to the non-JTPA cause of action, at the same time that a complaint under this procedure is pending.

F. With the exception of complaints alleging violations of the labor standards under § 143 of JTPA, a decision

rendered by GETD, in accordance with the Commonwealth of Virginia, JTPA Program Complaint Procedures, shall be final unless the Secretary of Labor exercises authority for federal-level review consistent with the provisions at 20 CFR, Part 627, Subpart F, "Federal handling of non-criminal complaints and other allegations."

§ 6.2. Discrimination complaints.

A. Pursuant to PL 99-570, § 167, and to the United States Department of Labor for programs under the JTPA in accordance with 29 CFR Part 34, the GETD, Commonwealth of Virginia, shall maintain the JTPA Discrimination Complaint Procedure for addressing any complaint alleging discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief and, for beneficiaries only, citizenship or participation in JTPA.

B. Each JTPA recipient shall comply with the JTPA Discrimination Complaint Procedure established by the GETD for resolving complaints of unfair treatment due to a prohibited factor in connection with JTPA programs operated by the SDA or any other recipient.

C. Each JTPA recipient shall provide for local level processing of complaints consistent with the JTPA Discrimination Complaint Procedures by the GETD.

D. JTPA recipients shall ensure initial and continuing notification of the right to file a complaint and an individual's option for local level processing of a complaint.

1. SDAs, other recipients and service providers shall post "Equal Opportunity Is the Law" notices in prominent locations that are available to applicants, eligible applicants, participants, applicants for employment, employees, unions or professional organizations holding collective bargaining or professional agreements with the recipient, and members of the public.

2. Recipients and service providers shall also ensure that the notice is disseminated in internal memoranda and other written communication, included in handbooks or manuals, provided to other recipients when financial assistance is passed, is made available in formats suitable for those with visual or hearing impairments and in languages other than English where a significant portion of the eligible population needs information in a language other than English.

3. Participants and employees shall be provided forms containing the notice with receipt of notice confirmed by participant/employee signature. The notice shall also be made part of the participant's/employee's file.

§ 6.3. Notice.

SDAs, other recipients, and service providers shall post notice of the available administrative procedures to include JTPA program and discrimination complaint procedures and inform participants of the appropriate procedure and the contact person in the event of a complaint. The terms of the JTPA procedure shall not be amended by recipients or service providers.

§ 6.4. Recordkeeping.

A. GETD shall maintain a log of all program and discrimination complaints filed at the local, state, and federal levels.

B. SDAS and other recipients shall maintain a log of complaints filed that allege discrimination on the ground of race, color, national origin, religion, sex, age, disability, political affiliation or belief and, for beneficiaries only, citizenship or participation in JTPA. The log shall include the name and address of the complainant, the ground of the complaint, a description of the complaint, the date filed, the disposition and date of disposition of the complaint, the agency/entity with which the complaint was filed, and any other pertinent information.

§ 6.5. Notification of complaint.

SDAs and other recipients shall ensure that information pertaining to discrimination complaints, including complaint logs, are maintained in such a manner as to ensure confidentiality of the information and used only for the purposes of recordkeeping and reporting; determining the extent to which the entity is operating its JTPA-funded programs or activities in a nondiscriminatory manner; or other use authorized by the nondiscrimination and equal opportunity provisions of JTPA.

SDAs and other recipients shall notify the GETD's Human Resources Office upon the initial filing of a program or discrimination complaint or both.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-01-01. Public Participation Guidelines in the Formation and Development of Regulations. (REPEALED)**

Title of Regulation: **VR 355-01-100. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The Public Participation Guidelines (VR 355-01-100) are intended to replace in entirety the Public Participation Guidelines for the Formation and Development of Regulations (VR 355-01-01) first promulgated in November 1984. The new guidelines

clarify the actions to be taken by staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The guidelines also identify how the public may initiate consideration of regulation development or review.

VR 355-01-100. Public Participation Guidelines.

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.

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

PART II.
GENERAL INFORMATION.

§ 2.1. General information.

A. The procedures in Part III of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. At the discretion of the [~~approving authority or the agency,~~ board or the commissioner] , the procedures in Part III may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;

2. Petitioner's mailing address and telephone number;

3. Petitioner's interest in the proposed action;

4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

If the board determines not to act upon a petition it shall provide a written response to such petition.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Interested parties lists.

A. Whenever the board so directs or upon its own initiative, the [~~agency~~ department] may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

B. Programs within the department which are responsible for rule making [as assigned by the commissioner] will maintain a list of those persons and organizations who have demonstrated an interest in the adoption, amendment or repeal of specific program regulations.

C. Periodically, but not less than every two years, the [~~department~~ commissioner] shall publish a notice in The Virginia Register, in a newspaper published at Richmond, and in other newspapers in Virginia localities to request that any individual or organization interested in participating in the development of specific rules and regulations so notify the office of the commissioner. Any persons or organizations identified in this process will be incorporated in the lists developed under this section. The commissioner may at any time remove from the lists persons or organizations that request to be removed or who fail to respond to any inquiry regarding continued interest.

§ 3.2. Notice of intent.

A. The department shall issue a Notice of Intended Regulatory Action (NOIRA) at the direction of the board whenever it considers the adoption, amendment or repeal of any regulation. The NOIRA shall include at least the following:

1. The title of the regulation to be developed or modified;

2. A summary of the subject matter including a brief statement as to the need for regulatory action;

3. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA;

4. The program contact person, mailing address and telephone number; and

5. The date by which comments must be received.

B. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in the Virginia Register.

C. The department shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register; and

2. Distribution by written notice to persons on the list(s) established under § 3.1 of this part.

§ 3.3. Proposed regulations.

A. After consideration of public input, the department may prepare the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

B. Upon approval of the draft proposed regulation by the board, the department [~~may~~ shall] publish a Notice of Public Comment (NOPC) and the proposal for public comment.

C. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and a name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation.

4. A statement that an analysis of the estimated impact has been conducted by the agency and is available to the public upon request. The statement of estimated impact should include the following:

a. Number and types of regulated entities or persons affected.

b. Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

c. Projected cost to the department for implementation and enforcement.

d. The beneficial impact the regulation is designed to produce.

e. An explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation.

f. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

g. A statement assessing in what manner the department believes the proposed regulation is the least burdensome alternative to the regulated community that fully meets the state purpose of the proposed regulation.

h. A schedule setting forth when and how the department will evaluate the regulation for effectiveness and continued need.

5. The date, time and place of at least one public hearing, if needed, held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The hearing(s) may be held at any time during the public comment period. The hearing(s) may be held in such location(s) as the [~~agency~~ department] determines will best facilitate input from interested persons.

6. The public comment period shall close no fewer than 60 days after publication of the NOPC in the Virginia Register.

7. The department shall disseminate the NOPC to the public via the following:

a. Distribution to the Registrar of Regulations for publication in the Virginia Register and for publication in a newspaper of general circulation published at the state capital and [~~such other newspapers as the department may deem appropriate~~ as the department may determine, it may similarly request publication in newspapers in localities particularly affected] .

b. Distribution by mail to persons on the list(s) established under § 3.1 of this part.

8. The department shall prepare a summary of comments received in response to the NOPC and submit it or, if requested, submit the full comments to the board. Both the summary and the comments shall become a part of the department's file.

§ 3.4. Completing adoption process.

Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

PART IV.
TRANSITION.

§ 4.1. Transition.

A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to [~~the effective date of this regulation~~ July 1, 1993,] shall be processed in accordance with the VR 355-01-01 Public Participation Guidelines in the Formation and Development of Regulations.

B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to [~~the effective date of this regulation~~ July 1, 1993,] shall be processed in accordance with this regulation (VR 355-01-100).

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Title of Regulation: **VR ~~355-40-600~~** *355-01-400* **. Regulations for the Conduct of Human Research.**

Statutory Authority: § 32.1-12.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

Chapter 603 of the 1992 Acts of Assembly requires the Board of Health to develop regulations for human research to be conducted or authorized by the Department of Health or any facilities or other entities operated, funded or licensed by the department. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research committees by institutions or agencies conducting or proposing to conduct or authorize human research. The regulations require annual reporting of human research committees to the State Health Commissioner. Human research which is subject to federal regulations is exempt from the regulations.

VR 355-01-400. Regulations for the Conduct of Human Research.

§ 1. Definitions.

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

"Affiliated with the institution" means employed by or contracting with the institution or directly or indirectly involved in the management thereof.

"Commissioner" means the Commissioner of the Department of Health.

"Committee" means human research committee assembled pursuant to § 7 of these regulations by any institution defined herein.

"Department" means the Department of Health.

"Human research" means any systematic investigation utilizing human participants who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the participants' needs.

"Informed consent" means the knowing and voluntary agreement, without undue inducement or any element of force, fraud, deceit, duress, or other forms of constraint or coercion, of a person who is capable of exercising free power of choice. For the purposes of human research, the basic elements of information necessary to such consent shall include:

1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonably to be expected;

2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the individual;

3. An instruction that the person may withdraw his consent and discontinue participation in the human research at any time without prejudice to him;

4. An explanation of any costs or compensation which

may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols; and

5. An offer to answer any inquiries by any individual concerning the procedures and protocols.

In addition to the required elements, the information provided to the individual should also include the following:

1. A statement that the study involves research, and an explanation that includes identification of any procedures which are experimental; the expected duration of the individual's participation; and a statement describing the extent, if any, to which confidentiality of records identifying the participant will be maintained; and if any data from this study are published, the individual will not be identified without his written permission;

2. A statement that there may be other risks not yet identified;

3. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the individual;

4. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the individual is otherwise entitled, and the individual may discontinue participation at any time without penalty or loss of benefits to which he is otherwise entitled;

5. An explanation of whom to contact for answers to pertinent questions about the research and research participants' rights, and whom to contact in the event of a research-related injury; and

6. For research involving more than minimal risk, an explanation as to whether any compensation or medical care is available if injury occurs and, if so, what is included or where further information may be obtained.

Information should be provided in a manner that is understandable to the individual with regard to his educational level and language of greatest fluency.

"Institution" or "agency" means any facility, program, or organization owned or operated by the Commonwealth, by any political subdivision, or by any person, firm, corporation, association, or other legal entity.

"Legally authorized representative" means the parent or parents having custody of a prospective participant, the legal guardian of a prospective participant or any person or judicial or other body authorized by law or regulation to consent on behalf of a prospective participant to such person's participation in the particular human research. For the purposes of this regulation, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, institution or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm or discomfort anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the participant.

§ 2. Authority.

These regulations are promulgated under the authority of § 32.1-12.1 and Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

§ 3. Applicability.

These regulations shall apply to the department, including any local health department and to any facility operated, funded or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants.

§ 4. Policy.

A. No human research may be conducted without informing the participant or his legally authorized representative of the procedures, risks, and discomforts of the research. The consent of the participant or his legally authorized representative to participate in the research shall be [~~documented~~ subscribed to] in writing [by the participant or his legally authorized representative] and supported by the signature of a witness not involved in the conduct of the research, except as provided for in §§ 10 F and 10 H of these regulations. Special arrangements shall be made for those who need assistance in understanding the consequences of participating in the research.

B. Each human research activity shall be reviewed and approved by a committee as set forth in § 7 of these regulations composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities.

C. Every person engaged in the conduct of human research or proposing to conduct human research shall associate himself with an institution or agency having a

research review committee, and the human research which he conducts or proposes to conduct shall be subject to review and approval by such committee in the manner set forth in these regulations.

D. Nontherapeutic research using patients or residents within an institution as defined herein is forbidden unless it is determined by the research review committee that such nontherapeutic research will not present greater than minimal risk.

E. The individual conducting the research shall be required to notify all participants of research of the risks caused by the research which are discovered after the research has concluded. [*If consent has been obtained by the signature of the legally authorized representative, the legally authorized representative shall also be notified.*]

§ 5. Review process for department.

A. Prior to the initiation of a human research project by any component of the department, a description of the proposed human research project shall be submitted to a research review committee established by the department for review and approval. The description shall include a statement of the purpose of the proposed project and justification thereof, the criteria for inclusion of a participant in the research project, a description of what will be done to the participants, and a copy of the informed consent statement.

B. The committee shall report by January 31 of each year to the commissioner on activities of the committee during the previous calendar year. Such reports shall include:

1. A description of each human research project reviewed and approved or disapproved;

2. Any significant deviations from proposals as approved;

3. A list of committee members, their qualifications for service on the committee, and their institutional affiliation; and

4. A copy of the minutes of any committee meetings conducted.

C. The chairman of the committee shall report as soon as possible to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.

D. The commissioner may inspect the records of the committee.

E. The commissioner shall report at least annually to the Governor and General Assembly on the human research projects conducted by any component of the department as annually reported to the commissioner by the committee.

§ 6. Review process for institutions or agencies funded or licensed by the department.

A. Prior to the initiation of a human research project by any institution or agency funded or licensed by the department, a description of the proposed human research project shall be submitted to a research review committee for review and approval. The description shall include a statement of the purpose of the proposed project and justification thereof, the criteria for inclusion of a participant in the research project, a description of what will be done to the participants, and a copy of the informed consent statement.

B. When more than one such institution or agency is involved in a research project, the cooperating entities may enter into joint review.

C. Such institutions or agencies having a committee shall report by January 31 of each year to the commissioner on activities of the committee during the previous calendar year. Such reports shall include:

1. A description of each human research project reviewed and approved or disapproved;

2. Any significant deviations from proposals as approved;

3. A list of committee members, their qualifications for service on the committee, and their institutional affiliation; and

4. A copy of the minutes of any committee meetings conducted.

D. The chairman of the committee shall report as soon as possible to the head of such institution or agency and to the commissioner any violation of the research protocol which led the committee to either suspend or terminate the research.

E. The commissioner may inspect the records of the committee.

F. The commissioner shall report at least annually to the Governor and General Assembly on the human research projects conducted by such institutions or agencies as annually reported to the commissioner by the relevant research review committees.

§ 7. Composition of research review committee.

A. Each committee shall have at least seven members, appointed by the head of the institution, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the institution. The committee shall be sufficiently qualified through the maturity, experience, and diversity of its members,

including consideration of race, gender and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. In addition to possessing the professional competence necessary to review specific activities, the committee shall be able to ascertain the acceptability of applications and proposals in terms of institutional commitments and regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee regularly reviews research that has an impact on patients or residents within an institution as defined herein or other vulnerable category of participants, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of members of one profession, and at least one member must be an individual whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy).

C. Each committee shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflicting interest. The committee size shall be maintained at no fewer than seven persons by appointment of a substitute representative for each member with a conflicting interest.

E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas.

G. The committee and the institution shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

§ 8. Elements of committee review process.

A. No human research shall be conducted or authorized by the institution or agency unless a research review committee has reviewed and approved the proposed human research project giving consideration to:

1. The necessity and utility of the research;

2. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;

3. The degree of the risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;

4. Whether the rights and welfare of the participants are adequately protected;

5. Whether the risks to the participants are outweighed by the potential benefits of the research [to them ;

6. Whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate to the individual's educational level and language of greatest fluency;

7. Whether the [~~information to be provided~~ written consent form] is adequate and appropriate in both content and wording for the particular research and for the particular participants of the research relative to their educational level and language of greatest fluency and whether the consent document reasonably reflects full explanation and adequate understanding;

8. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified; and

9. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness.

B. The committee shall consider research proposals within 45 days after submission to the committee. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

C. During the committee review of research projects, no personal identifiers of present or potential participants should be stated.

D. The committee shall approve or develop a written description of the procedure to be followed when a participant has a complaint about a research project in which he is participating or has participated.

E. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the committee to determine if there has been a violation of the protocol.

F. The committee shall require reports from approved research projects at least annually to ensure conformity

with the approved proposal. The frequency of such reports shall be consistent with the nature and degree of risk of each research project. The committee shall also require a report from the research project at the conclusion of the project.

§ 9. Expedited review of human research projects.

A. The committee is authorized to conduct an expedited review of a human research project which involves no more than minimal risk to the subjects if:

1. Another institution's or agency's human research review committee has reviewed and approved the project; or

2. The review involves only minor changes in previously approved research and the changes occur during the approved project period.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

§ 10. Informed consent.

A. To conduct human research, informed consent of the participant or his legally authorized representative must be obtained, [~~documented~~ subscribed to] in writing [; by the participant or his legally authorized representative] and supported by the signature of a witness not involved in the conduct of research, except as provided for in §§ 10 F and 10 H of these regulations. If the participant is a minor otherwise capable of rendering informed consent, consent shall be subscribed to in writing by both the minor and his legally authorized representative.

B. A legally authorized representative may not consent to nontherapeutic research unless it is determined by the committee that such research will present no more than a minor increase over minimal risk to the participant.

C. An investigator shall seek such consent only under circumstances that provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and that assures absence of coercion or undue influence. The information that is given to the participant or the representative shall be in language understandable to the participant or the representative with regard to his educational level and language of greatest fluency.

D. No informed consent form shall include any language through which the prospective participant waives or appears to waive any of his legal rights, including any release of any individual, institution or agency or any agents thereof from liability for negligence.

E. Notwithstanding consent by a legally authorized representative, no person who is otherwise capable of rendering informed consent shall be forced to participate in any human research. In the case of persons suffering from organic brain diseases causing progressive deterioration of cognition for which there is no known cure or medically accepted treatment, the implementation of experimental courses of therapeutic treatment to which a legally authorized representative has given informed consent shall not constitute the use of force.

F. The committee may approve a consent procedure which omits or alters some or all of the elements of informed consent set forth in § 1 of these regulations, or waives the requirement to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;

2. The omission, alteration or waiver will not adversely affect the rights and welfare of the participants;

3. The research could not practicably be performed without the omission, alteration or waiver; and

4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

G. Except as provided in subsection H of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 1 of these regulations. This form may be read to the participant or the participant's legally authorized representative, but, in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed and witnessed; or

2. A short form written consent document stating that the elements of informed consent required by § 1 of these regulations have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary and a copy of the short form shall be given to the participant or the representative.

H. The committee may waive the requirement that the investigator obtain written informed consent for some or all participants if it finds that the only record linking the participant and the research would be the consent document and the principal risk would be potential harm

resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes shall govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement explaining the research.

§ 11. Categories of human research exempt from regulation.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations:

1. The surveillance and investigation by the department into all preventable diseases and epidemics in the Commonwealth and into the means for the prevention of such diseases and epidemics conducted pursuant to § 32.1-39 of the Code of Virginia.

2. Research designed to study on a large scale anonymous vital records and registry data collected pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1 (Vital Records), § 32.1-64.1 (Virginia Hearing Impairment Identification and Monitoring System), § 32.1-69.1 (Viginia Congenital Anomalies Reporting and Education System), § 32.1-70 (Statewide Cancer Registry), § 32.1-71.1 (Statewide Alzheimer's Disease and Related Disorders Registry), and §§ 32.116.1 and 32.116.1:2 (Emergency Medical Services Patient Care Information System) [~~*or similar studies of the effects of proposed social or economic change or methods or systems for the delivery of or payment for social or health services*~~] .

3. Research or student learning outcomes assessment conducted in educational settings such as research involving:

a. Regular or special education instructional strategies; or

b. The effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods; or

c. The use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that participants cannot be identified, directly or through identifiers linked to the participants.

4. Research involving survey or interview procedures unless responses are recorded in such a manner that the participants can be identified, directly or through identifiers linked to the participants, and either:

a. The participant's responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior such as sexual behavior, drug or alcohol use, or illegal conduct.

5. Research involving survey or interview procedures, when the respondents are elected or appointed public officials or candidates for public office.

6. Research involving solely the observation of public behavior, including observation by participants, unless observations are recorded in such a manner that the participants can be identified, directly or through identifiers linked to the participants, and either:

a. The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to his financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

7. Research involving the collection or study of existing data, documents, records, or pathological specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner so that participants cannot be identified, directly or through identifiers linked to the participants.

§ 12. Committee records.

A. Documentation of committee activities shall be prepared and maintained and shall include the following:

1. Copies of all research proposals reviewed, scientific evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to participants;

2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controversial issues and their resolution;

3. Records of continuing review activities;

4. Copies of all correspondence between the committee and the investigators;

5. A list of committee members;

6. Written procedures for the committee; and

7. Statements of significant new findings provided to participants.

B. The records required by these regulations shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

§ 13. Applicability of federal policies.

Human research at institutions which are subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempt from these regulations. Such institutions shall notify the commissioner annually by January 31 of their compliance with the policies and regulations of federal agencies. The commissioner shall identify institutions exempt from these regulations as reported in accordance with this section in the annual report to the Governor and the General Assembly.

* * * * * * * * *

Title of Regulation: **VR 355-18-014. Waterworks Operation Fee.**

Statutory Authority: §§ 32.1-170 and 32.1-171.1 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

This regulation requires an owner of a waterworks to pay to the Department of Health an operation fee of no more than $160,000 annually. The amount of fee is based on the number of persons served, number of connections, or the classification of the waterworks. The revenue generated by this regulation will supplement funding to implement the 1986 amendments to the federal Safe Drinking Water Act (SDWA) and will be deposited into the Waterworks Technical Assistance Fund established in the state treasury by § 32.1-171.1 B of the Code of Virginia.

The fee for each community waterworks is $2.05 per customer account per year; each nontransient noncommunity waterworks, a flat fee of $90 per year. This fee schedule can only be changed by use of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

VR 355-18-014. Waterworks Operation Fee.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

As used in this regulation, unless otherwise defined, words and terms are the same as those in § 32.1-167 of the Code of Virginia or in § 1.2 of VR 355-18-001 (Waterworks Regulations) and shall have the following meaning, unless the context clearly indicates otherwise:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner who is the executive officer of the State Board of Health.

"Community waterworks" means a waterworks which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Customer account" means (i) a metered or unmetered potable water service connection to the [~~customer's property~~ customer] which is billed [~~separately~~ in any way] by the waterworks owner; or (ii) where any community waterworks sends no billing, the customer accounts shall be defined as equal to the population served divided by four.

"Department" means the Virginia Department of Health.

"Due" means received or postmarked by the stated date.

"Fiscal year" means the year from July 1 to June 30.

"Nontransient noncommunity waterworks (NTNC)" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity or the federal government, which supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;

2. If a meter is not installed, the service connection is the point of connection to the waterworks;

3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

"Waterworks" means a system that serves piped water

for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

PART II.
GENERAL INFORMATION.

§ 2.1. Purpose of the regulation.

The [~~board proposes to establish~~ regulation establishes] a waterworks operation fee schedule where the number of customer accounts of a community waterworks is the basis for assessing charges to the community waterworks. The fee schedule for nontransient noncommunity waterworks is based on the waterworks classification as a nontransient noncommunity waterworks. No waterworks owner shall pay more than $160,000 per year per waterworks, nor is it the intent that an owner be charged this fee on water transferred to another waterworks.

§ 2.2. Compliance with the Administrative Process Act.

The provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) shall govern the promulgation and administration of this regulation.

§ 2.3. Powers and procedure of regulation not exclusive.

The commissioner may enforce this regulation through any means lawfully available including, but not limited to, the revocation of the waterworks operation permit (§ 32.1-174 of the Code of Virginia).

PART III.
WATERWORKS OPERATION FEES.

§ 3.1. Community waterworks.

A. An annual waterworks operation fee, not to exceed $160,000, shall be charged as of July 1 of each fiscal year to the owner of each community waterworks in an amount as follows:

[~~1.~~ For each] fiscal year [~~1994~~] (starting July 1, 1993): the number of customer accounts multiplied by [~~$2.40~~ $2.05] .

[~~2. Fiscal years thereafter: the number of customer accounts multiplied by $3.61.~~]

B. The fee shall be paid to the department and be due as follows:

1. If the fee established in § 3.1 A is $400 or less, the fee shall be due in a lump sum on August 1;

2. If the fee established in § 3.1 A is more than $400, the fee shall be due in a lump sum or equal quarterly installments each year as follows:

a. August 1 - The lump sum or first quarterly installment.

b. November 1 - The second quarterly installment.

c. February 1 - The third quarterly installment.

d. May 1 - The fourth quarterly installment.

C. Data verification.

The number of customer accounts will be based on the best available data for a maximum period of six months prior to the close of business on June 30 each year as provided by the waterwork's owner or chief administrative officer to the department. This verification shall be provided to the department by the owner of each community waterworks at the address specified in § 3.6 and is due by August 1 of each year with the appropriate payment.

§ 3.2. Nontransient noncommunity waterworks (NTNC).

A. An annual waterworks operation fee shall be charged as of July 1 of each fiscal year to the owner of each NTNC waterworks as follows:

[~~1.~~ For each] fiscal year [~~1994~~] (starting July 1, 1993): an amount of [~~$100~~ $90] per nontransient noncommunity waterworks.

[~~2. Fiscal years thereafter: an amount of $150 per nontransient noncommunity waterworks.~~

B. The fee shall be due to the department every November 1.

§ 3.3. Notice.

The department will send to each waterworks owner a payment form/data verification notice as prescibed by the department on or before June 1 of each year. Failure to receive this notice does not relieve the responsibility of the waterworks owner from providing payments or verification.

§ 3.4. Refundability.

The fees established in §§ 3.1 and 3.2 are nonrefundable but are credited to any new owner of the same waterworks.

§ 3.5. Exemptions.

Customer accounts through which water is sold or delivered to another waterworks are exempted from the fee calculated in § 3.1.

§ 3.6. Payments.

Payments are to be made payable to: VDH - Waterworks Technical Assistance Fund and sent to:

Virginia Department of Health
Division of Water Supply Engineering
1500 E. Main Street
Room 109
P.O. Box 2448
Richmond, VA 23218

§ 3.7. Late fees and administrative charges.

In addition to the powers in § 2.3, operation fees not received or postmarked by the due date shall be subject to interest, administrative charges, and late penalty fees in accordance with § 2.1-732 of the Code of Virginia.

THIS IS A BILL/INVOICE FOR PAYMENT OF THE WATERWORKS OPERATION FEE

BILL #

PLEASE REMIT TO: Virginia Department of Health,
Division of Water Supply Engineering,
1500 E. Main Street, Room 109,
Richmond, Virginia 23219

PAYABLE TO: VDH - Waterworks Technical Assistance Fund

DUE DATE: On or before and is for the period July 1, through June 30, . If your bill is more than $400, you have the option to pay in a lump sum or four equal quarterly payments as shown below. Please retain a copy of this bill/invoice and return a copy with each payment to insure that your account is properly credited.

08-01	Lump Sum or First installment	02-01	Third Installment
11-01	Second Installment	05-01	Fourth Installment

This bill must be signed by the Owner or Chief Administrative Officer of the Waterworks and it or a copy returned with any continuation sheets and payment. Call Tom Gray at (804) 786-5566 with any questions.

You must detach this payment form/data verification notice and send it and any continuation sheet(s) back with your payment in the enclosed envelope. Make any corrections in the shaded areas provided below. (State agencies paying by IAT must send copy of IAT and this bill to the above address. For IATs - Waterworks Technical Assistance Fund - funding code is 136 601 02 48 02702 103 A.) Our Federal Identifcation Number is 546001775. Put Bill # on your check/IAT.

PWSID	TYPE	PWS Name	Customer Account(s)	Multiplied by	=	Amount

Total of Continuation Sheet(s):

BILL # TOTAL BILL

The information on this bill is true, accurate and correct to the best of my knowledge, and I will clarify or supplement information pertaining to this bill upon request.

Chief Administrative Officer or Owner: Phone Number: _____

Title: _____ Signature: _____

Date: _____ Name: _____

Owner Federal Identification Number / VA Drivers License Number /Social Security Number: _____ - _____ - _____

THIS IS A BILL/INVOICE FOR PAYMENT OF THE WATERWORKS OPERATION FEE

Continuation Sheet

BILL #

PWSID	TYPE	PWS Name	Customer Account(s)	Multiplied by	=	Amount

Total of Continuation Sheet:

* * * * * * * *

Title of Regulation: ~~VR 355-28-01~~ *VR 355-28-100* . **Regulations for Disease Reporting and Control.**

Statutory Authority: §§ 32.1-12 and 32.1-35 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

The Regulations for Disease Reporting and Control explain the requirements for reporting communicable diseases, toxic substances related diseases, cancer, and memory loss disorders to the health department for the purposes of disease surveillance and control. Included are definitions of who is required to report, which diseases are reportable, and what mechanisms are available for reporting. Amendment 5 to the regulations consists of the following changes:

1. Elevated blood lead levels in children age zero to 15 is officially reportable. Reports of venous blood lead levels of 15 ug/dL or higher is required to be submitted to the local health department by all reporting sources, i.e., physicians, hospital directors, and laboratory directors.

2. A new form (Epi-1) on which to report information on a person having a notifiable condition is replacing six different forms formerly used for disease reporting. One patient will be reported per form, which will be printed in three parts so that copies will be available for the reporter, the local health department, and the state health department. In addition to the Epi-1 form, persons who report disease will also now be able to report on a computer generated facsimile of the Epi-1 or a Centers for Disease Control and Prevention surveillance form that contains the same required information.

3. Some minor changes are also being finalized, including adding Escherichia coli 0157:H7 to the definition of foodborne outbreaks, adding waterborne outbreaks to the list of conditions to be reported rapidly, allowing laboratory directors to report the results of any confirmatory test for the conditions they are required to report, modifying Part V on Immunization to comply with recent changes in the Code of Virginia, and bringing Part X, regarding reporting memory loss disorders, also in accordance with changes to the Code of Virginia. Telephone transmitted facsimile has been added to the list of acceptable means of rapid reporting.

VR 355-28-100. Regulations for Disease Reporting and Control.

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:

"Board" means the State Board of Health.

"Cancer" means all carcinomas, sarcomas, melanomas, leukemias, and lymphomas excluding localized basal and squamous cell carcinomas of the skin, except for lesions of the mucous membranes.

"Carrier" means a person who, with or without any apparent symptoms of a communicable disease, harbors a specific infectious agent and may serve as a source of infection.

"Commissioner" means the State Health Commissioner, his duly designated officer or agent.

"Communicable disease" means an illness due to an infectious agent or its toxic products which is transmitted, directly or indirectly, to a susceptible host from an infected person, animal, or arthropod or through the agency of an intermediate host or a vector or through the inanimate environment.

"Contact" means a person or animal known to have been in such association with an infected person or animal as to have had an opportunity of acquiring the infection.

"Contact tracing" means the process by which an infected person or health department employee notifies others that they may have been exposed to the infected person in a manner known to transmit the infectious agent in question.

"Department" means the State Department of Health.

"Designee" or *"designated officer or agent"* means any person, or group of persons, designated by the State Health Commissioner, to act on behalf of the commissioner or the board.

"Epidemic" means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy.

"Foodborne outbreak" means a group manifestation of illness acquired through the consumption of food or water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to heavy metal intoxications, staphylococcal food poisoning, botulism, salmonellosis, shigellosis, Clostridium perfringens food poisoning ~~and~~ , hepatitis A , *and Escherichia coli 0157:H7* .

"Immunization" means a treatment which renders an individual less susceptible to the pathologic effects of a disease or provides a measure of protection against the

disease (e.g., inoculation, vaccination).

"Independent pathology laboratory" means a nonhospital or a hospital laboratory performing surgical pathology, including fine needle aspiration biopsy and bone marrow examination services, which reports the results of such tests directly to physician offices, without reporting to a hospital or accessioning the information into a hospital tumor registry.

"Investigation" means an inquiry into the incidence, extent, source and causation of a disease occurrence.

"Isolation" means separation for the period of communicability of infected persons or animals from others in such places and under such conditions as to prevent or limit the direct or indirect transmission of an infectious agent from those infected to those who are susceptible. The means of isolation shall be the least restrictive means appropriate under the facts and circumstances as determined by the commissioner.

"Laboratory director" means any person in charge of supervising a laboratory conducting business in the Commonwealth of Virginia.

"Lead [~~poisoning~~ elevated levels] in children" means a child or children 15 years of age and younger with a confirmed venous blood level greater than or equal to 15 micrograms of lead per deciliter [(ug/dL)] of whole blood [~~(ug/dL)~~] , or such lower blood lead level as may be recommended for individual intervention by the department or the United States Department of Health and Human Services, Public Health Services, Centers for Disease Control.

"Medical care facility" means any hospital or nursing home licensed in the Commonwealth, or any hospital operated by or contracted to operate by an entity of the United States government or the Commonwealth of Virginia.

"Memory loss disorder" means any progressive dementia caused by AIDS, alcohol abuse, probable Alzheimer's disease, cerebral vascular disease, Creutzfeldt-Jakob disease, depression, head trauma, normal pressure hydrocephalus, Parkinson's disease, space-occupying lesion, toxic or metabolic disorder, or other known cause.

"Midwife" means any person who is [~~registered~~ *licensed*] as a nurse midwife by the [~~State Board~~ *Virginia Boards*] of Nursing [*and Medicine*] or who possesses a midwife permit issued by the State Health Commissioner.

"Nosocomial outbreak" means any group of illnesses of common etiology occurring in patients of a medical care facility acquired by exposure of those patients to the disease agent while confined in such a facility.

"Nurse" means any person licensed as a professional nurse or as a licensed practical nurse by the Virginia [~~State~~] Board of Nursing.

"Period of communicability" means the time or times during which the etiologic agent may be transferred directly or indirectly from an infected person to another person, or from an infected animal to a person.

"Physician" means any person licensed to practice medicine by the Virginia [~~State~~] Board of Medicine.

"Quarantine" means generally, a period of detention for persons or domestic animals that may have been exposed to a reportable, contagious disease for purposes of observation or treatment.

1. Complete quarantine. The formal limitation of freedom of movement of well persons or animals exposed to a reportable disease for a period of time not longer than the longest incubation period of the disease in order to prevent effective contact with the unexposed. The means of complete quarantine shall be the least restrictive means appropriate under the facts and circumstances, as determined by the commissioner.

2. Modified quarantine. A selective, partial limitation of freedom of movement of persons or domestic animals, determined on the basis of differences in susceptibility, or danger of disease transmission. Modified quarantine is designed to meet particular situations and includes but is not limited to, the exclusion of children from school and the prohibition or restriction of those exposed to or suffering from a communicable disease from engaging in a particular occupation. The means of modified quarantine shall be the least restrictive means appropriate under the facts and circumstances, pursuant to § 3.1 E of these regulations or as determined by the commissioner.

3. Segregation. The separation for special control, or observation of one or more persons or animals from other persons or animals to facilitate control or surveillance of a reportable disease. The means of segregation shall be the least restrictive means available under the facts and circumstances, as determined by the commissioner.

"Reportable disease" means an illness due to a specific toxic substance, occupational exposure, or infectious agent, which affects a susceptible individual, either directly, as from an infected animal or person, or indirectly through an intermediate host, vector, or the environment, as determined by the board.

"Surveillance" means the continuing scrutiny of all aspects of occurrence and spread of a disease relating to effective control of that disease. Included in the process of surveillance are the collection and evaluation of:

1. Morbidity and mortality reports.

2. Special reports of field investigations of epidemics and individual cases.

3. Isolation and identification of infectious agents by laboratories.

4. Data concerning the availability, use, and untoward side effects of the substances used in disease control.

5. Information regarding immunity levels in segments of the population.

"Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal but not including any pharmaceutical preparation which deliberately or inadvertently is consumed in such a way as to result in a drug overdose.

[*"Waterborne outbreak" means a group manifestation of illness acquired through the consumption of water contaminated with chemicals or an infectious agent or its toxic products. Such illnesses include but are not limited to giardiasis, viral gastroenteritis, cryptosporidiosis, hepatitis A, cholera, and shigellosis.*]

PART II.
GENERAL INFORMATION.

§ 2.1. Authority.

Chapter 2 of Title 32.1 of the Code of Virginia deals with the reporting and control of diseases. Specifically, § 32.1-35 directs the Board of Health to promulgate regulations specifying which diseases occurring in the Commonwealth are to be reportable and the method by which they are to be reported. Further, § 32.1-42 of the Code *of Virginia* authorizes the board to promulgate regulations and orders to prevent a potential emergency caused by a disease dangerous to the public health. Section 32.1-12 of the Code *of Virginia* empowers the Board of Health to adopt such regulations as are necessary to carry out provisions of laws of the Commonwealth administered by the Commissioner of the Department of Health.

§ 2.2. Purpose.

These regulations are designed to provide for the uniform reporting of diseases of public health importance occurring within the Commonwealth in order that appropriate control measures may be instituted to interrupt the transmission of disease.

§ 2.3. Administration.

A. State Board of Health.

The State Board of Health ("board") has the responsibility for promulgating regulations pertaining to the reporting and control of diseases of public health importance.

B. State Health Commissioner.

The State Health Commissioner ("commissioner") is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of and review by the board.

C. Local health director.

The local health director is responsible for the surveillance and investigation of those diseases specified by these regulations which occur in his jurisdiction. He is further responsible for reporting all such surveillance and investigations to the State Department of Health. In cooperation with the commissioner, he is responsible for instituting measures for disease control, which may include quarantine or isolation as required by the commissioner.

D. Office of Epidemiology.

The Office of Epidemiology is responsible for the statewide surveillance of those diseases specified by these regulations, for coordinating the investigation of those diseases with the local health director and ~~regional medical~~ *operations* director, and for providing direct assistance where necessary. The Director of the Office of Epidemiology acts as the commissioner's designee in reviewing reports and investigations of diseases and recommendations by local health directors for quarantine or isolation. However, authority to order quarantine or isolation resides solely with the commissioner, unless otherwise expressly provided by him.

E. Confidentiality.

All persons responsible for the administration of these regulations shall ensure that the anonymity of patients and practitioners is preserved, according to the provisions of §§ 32.1-38, 32.1-41, 32.1-71, and 32.1-71.4 of the Code of Virginia.

§ 2.4. Application of regulations.

These regulations have general application throughout the Commonwealth.

~~§ 2.5. Effective date of original regulations.~~

~~August 1, 1980.~~

~~Effective date of amendment No. 1:~~

~~August 21, 1984.~~

~~Effective date of emergency amendment of § 3.1:~~

~~January 4, 1988.~~

~~Effective date of amendment No. 2:~~

~~February 15, 1989.~~

~~Effective date of amendment No. 3.~~

~~September 14, 1989.~~

~~Effective date of amendment No. 4.~~

~~March 28, 1990.~~

~~Effective date of amendment No. 5.~~

~~November 6, 1991.~~

~~§ 2.6.~~ *§ 2.5.* Application of the Administrative Process Act.

The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 of Title 9 of the Code *of Virginia* , shall govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings and appeals hereunder. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.1 [*of the Code of Virginia*].

~~§ 2.7.~~ *§ 2.6.* Powers and procedures of regulations not exclusive.

The board reserves the right to authorize a procedure for enforcement of these regulations which is not inconsistent with the provisions set forth herein and the provisions of Chapter 2 of Title 32.1 of the Code *of Virginia* .

PART III.
REPORTING OF DISEASE.

§ 3.1. Reportable disease list.

The board declares the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in § 3.2:

A. List of reportable diseases:

Acquired Immunodeficiency Syndrome
Amebiasis
Anthrax
Arboviral infections
Aseptic meningitis
Bacterial meningitis (specify etiology)
Botulism
Brucellosis
Campylobacter infections (excluding C. pylori)
Chancroid
Chickenpox
Chlamydia trachomatis infections
Congenital rubella syndrome
Diphtheria
Encephalitis
primary
(specify etiology)
post-infectious
Foodborne outbreaks
Giardiasis
Gonorrhea
Granuloma inguinale
Haemophilus influenzae infections invasive
Hepatitis
A
B
Non A, Non B
Unspecified
Histoplasmosis
Human immunodeficiency virus (HIV) infection
Influenza
Kawasaki syndrome
Legionellosis
Lead [~~*poisoning*~~ *elevated levels*] *in children*
Leprosy
Leptospirosis
Listeriosis
Lyme disease
Lymphogranuloma venereum
Malaria
Measles (Rubeola)
Meningococcal infections
Mumps
Nosocomial outbreaks
Occupational illnesses
Ophthalmia neonatorum
Pertussis (Whooping cough)
Phenylketonuria (PKU)
Plague
Poliomyelitis
Psittacosis
Q fever
Rabies in animals
Rabies in man
Rabies treatment, post exposure
Reye syndrome
Rocky Mountain spotted fever
Rubella (German measles)
Salmonellosis
Shigellosis
Smallpox
Syphilis
Tetanus
Toxic shock syndrome
Toxic substance related illnesses
Trichinosis
Tuberculosis
Tularemia
Typhoid fever
Typhus, flea-borne
Vibrio infections including cholera
Waterborne outbreaks
Yellow fever

B. Reportable diseases requiring rapid communication.

Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of these diseases, listed below, shall be made by the most rapid means available, preferably that of telecommunication (e.g., telephone, [*telephone transmitted facsimile,*] telegraph, teletype, etc.) to the local health director or other professional employee of the department:

Anthrax
Botulism
Cholera
Diphtheria
Foodborne outbreaks
Haemophilus influenzae infections, invasive
Hepatitis A
Measles (Rubeola)
Meningococcal infections
Plague
Poliomyelitis
Psittacosis
Rabies in man
Smallpox
Syphilis, primary and secondary
Tuberculosis
Waterborne outbreaks
Yellow Fever

C. Diseases to be reported by number of cases.

The following disease in the list of reportable diseases shall be reported as number-of-cases only:

Influenza (by type, if available)

D. Human immunodeficiency virus (HIV) infection.

Every physician practicing in this Commonwealth shall report to the local health department any patient of his who has tested positive for [~~exposure to~~] human immunodeficiency virus (HIV). Every person in charge of

a medical care facility shall report the occurrence in or admission to the facility of a patient with HIV infection unless there is evidence that the occurrence has been reported by a physician. When such a report is made, it shall include the information required in § 3.2 A. Only individuals who have positive blood tests for HIV antibodies as demonstrated by at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot are considered to have HIV infection.

E. Toxic substances related diseases or illnesses.

Diseases or illnesses resulting from exposure to a toxic substance, shall include, but not be limited to the following:

Occupational Lung Diseases	Occupationally-Related Cancers
silicosis	mesothelioma
asbestosis	
byssinosis	

Furthermore, all toxic substances-related diseases or illnesses, including pesticide poisonings, illness or disease resulting from exposure to a radioactive substance, or any illness or disease that is indicative of an occupational health, public health, or environmental problem shall be reported.

If such disease or illness is verified, or suspected, and presents an emergency, or a serious threat to public health or safety, the report of such disease or illness shall be by rapid communication as in § 3.1 B.

F. Unusual or ill-defined diseases, illnesses, or outbreaks.

The occurrence of outbreaks or clusters of any illness which may represent an unusual or group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

G. Contact tracing.

When notified about a disease specified in § 3.1 A of the regulations, the local health department shall perform contact tracing for infectious syphilis and HIV infection, and may perform contact tracing for the other diseases if deemed necessary to protect the public health. The local health director shall have the responsibility to accomplish contact tracing by either having patients inform their potential contacts directly or through obtaining pertinent information such as names, descriptions, and addresses to enable the health department staff to inform the contacts. All contacts of HIV infection shall be afforded the opportunity for individual face-to-face disclosure of the test results and appropriate counseling. In no case shall names of informants be revealed to contacts by the health department. All information obtained shall be kept strictly confidential.

§ 3.2. Those required to report.

A. Physicians.

Each physician who treats or examines any person who is suffering from or who is suspected of having a reportable disease, or who is suspected of being a carrier of a reportable disease shall report that person's name, address, age, sex, race, name of disease diagnosed or suspected, and the date of onset of illness except that influenza should be reported by number of cases only (and type of influenza, if available). Reports are to be made to the local health department serving the jurisdiction where the physician practices. Any physician making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Such reports shall be made on a form to be provided by the department ~~(CD-24)~~ *(Epi-1)* [, *a computer generated facsimile of Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information*] and shall be made within seven days unless the disease in question requires rapid reporting under § 3.1 B or § 3.1 F. ~~(Venereal diseases are reported on Form VD-35C in the manner described above.)~~

B. Directors of laboratories.

Any person who is in charge of a laboratory conducting business in the Commonwealth shall report any laboratory examination of any specimen derived from the human body which yields evidence, by the laboratory method(s) indicated *or any other confirmatory test* , of a disease listed below:

Anthrax - by culture

Campylobacter infections (excluding C. pylori) - by culture

Chlamydia trachomatis infections - by culture or antigen detection methods

Cholera - by culture
Diphtheria - by culture

Gonococcal infections - by culture or microscopic examination

Haemophilus influenzae infections - by culture or antigen detection assay of blood or cerebrospinal fluid

Hepatitis A - by serology specific for IGM antibodies

Human immunodeficiency virus (HIV) infection - by positive blood tests for HIV antibodies as demonstrated by at least two enzyme-linked immunosorbent assays (done in duplicate at the same time or singly at different times), and a supplemental test such as the western blot.

Influenza - by culture or serology

Lead [~~poisoning~~ elevated levels] in children - venous blood lead level greater than or equal to 15 ug/dL in children age 0 - 15.

Legionellosis - by culture or serology

Listeriosis - by culture

Malaria - by microscopic examination

Meningococcal infections - by culture of blood or cerebrospinal fluid

Mycobacterial diseases - by culture

Pertussis - by culture or direct fluorescent antibody test

Plague - by culture or direct fluorescent antibody test

Poliomyelitis - by culture or serology

Rabies in animals - by microscopic or immunologic examination

Salmonella infections - by culture

Shigella infections - by culture

Syphilis - by serology or dark field examination

Trichinosis - by microscopic examination of a muscle biopsy

Each report shall give the name and address of the person from whom the specimen was obtained and, when available, the person's age, race and sex. The name and address of the physician or medical facility for whom the examination was made shall also be provided. When the influenza virus is isolated, the type should be reported, if available. Reports shall be made within seven days to the local health department serving the jurisdiction in which the laboratory is located and shall be made on Form ~~CD-24.3~~ *Epi-1* or on the laboratory's own form if it includes the required information. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Exceptions: With the exception of reporting laboratory evidence of gonococcal infections and syphilis, laboratories operating within a medical care facility shall be considered to be in compliance with the regulations when the director of that medical care facility assumes the reporting responsibility.

~~Laboratory examination results indicating gonococcal infections or syphilis shall be reported either on Form VD-36 or on Form CD-24.3 or another form acceptable to the Director of the Office of Epidemiology.~~

A laboratory may fulfill its responsibility to report mycobacterial diseases by sending a positive culture for identification or confirmation, or both, to the Virginia Division of Consolidated Laboratory Services. The culture must be identified with the patient and physician information required above.

C. Person in charge of a medical care facility.

Any person in charge of a medical care facility shall make a report to the local health department serving the jurisdiction where the facility is located of the occurrence in or admission to the facility of a patient with a reportable disease listed in § 3.1 A unless he has evidence that the occurrence has been reported by a physician. Any person making such report as authorized herein shall be immune from liability as provided by § 32.1-38 of the Code of Virginia. The requirement to report shall include all inpatient, outpatient and emergency care departments within the medical care facility. Such report shall contain the patient's name, age, address, sex, race, name of disease being reported, the date of admission, hospital chart number, date expired (when applicable), and attending physician. Influenza should be reported by number of cases only (and type of influenza, if available). Reports shall be made within seven days unless the disease in question requires rapid reporting under § 3.1 B or § 3.1 F and shall be made on Form ~~CD-24.1~~ *Epi-1* .[, *a computer generated facsimile of Form Epi-1, or a Centers for Disease Control and Prevention (CDC) surveillance form that provides the same information*]. ~~Nosocomial outbreaks shall be reported on Form CD-24.2.~~

(Note: See § 3.2 B "Exceptions")

D. Person in charge of a school.

Any person in charge of a school shall report immediately to the local health department the presence or suspected presence in his school of children who have common symptoms suggesting an epidemic or outbreak situation. Any person so reporting shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

E. Local health directors.

The local health director shall forward within seven days to the Office of Epidemiology of the State Health Department any report of a disease or report of evidence of a disease which has been made on a resident of his jurisdiction. This report shall be by telecommunication if the disease is one requiring rapid communication, as required in § 3.1 B or § 3.1 F. All such rapid reporting shall be confirmed in writing and submitted to the Office of Epidemiology within seven days. Furthermore, the local health director shall immediately forward to the appropriate local health director any disease reports on individiuals residing in the latter's jurisdiction. The local health director shall review reports of diseases received from his jurisdiction and follow-up such reports, when indicated, with an appropriate investigation in order to evaluate the severity of the problem. He shall determine, in consultation with the ~~regional medical~~ *operations*

director, the Director of the Office of Epidemiology, and the commissioner if further investigation is required and if complete or modified quarantine will be necessary.

Modified quarantine shall apply to situations in which the local health director on the scene would be best able to judge the potential threat of disease transmission. Such situations shall include, but are not limited to, the temporary exclusion of a child with a communicable disease from school and the temporary prohibition or restriction of any individual(s), exposed to or suffering from a communicable disease, from engaging in an occupation such as foodhandling that may pose a threat to the public. Modified quarantine shall also include the exclusion, under § 32.1-47 of the Code of Virginia of any unimmunized child from a school in which an outbreak, potential epidemic, or epidemic of a vaccine preventable disease has been identified. In these situations, the local health director may be authorized as the commissioner's designee to order the least restrictive means of modified quarantine.

Where modified quarantine is deemed to be insufficient and complete quarantine or isolation is necessary to protect the public health, the local health director, in consultation with the ~~regional~~ ~~medical~~ *operations* director and the Director of the Office of Epidemiology, shall recommend to the commissioner that a quarantine order or isolation order be issued.

F. Persons in charge of hospitals, nursing homes, homes for adults, and correctional facilities.

In accordance with § 32.1-37.1 of the Code of Virginia, any person in charge of a hospital, nursing home, home for adults or correctional facility shall, at the time of transferring custody of any dead body to any person practicing funeral services, notify the person practicing funeral services or his agent if the dead person was known to have had, immediately prior to death, an infectious disease which may be transmitted through exposure to any bodily fluids. These include any of the following infectious diseases:

Creutzfeldt-Jakob disease

Human immunodeficiency virus infection

Hepatitis B

Hepatitis Non A, Non B

Rabies

Infectious syphilis

PART IV.
CONTROL OF DISEASE.

§ 4.1. The "Methods of Control" sections of the ~~Fourteenth~~ *Fifteenth* Edition of the Control of Communicable Diseases in Man ~~(1985)~~ *(1990)* published by the American Public Health Association shall be complied with by the board and commissioner in controlling the diseases listed in § 3.1 A, except to the extent that the requirements and recommendations therein are outdated, inappropriate, inadequate, or otherwise inapplicable. The board and commissioner reserve the right to use any legal means to control any disease which is a threat to the public health.

PART V.
IMMUNIZATION.

§ 5.1. Dosage and age requirements for immunizations.

Every child in Virginia shall be immunized against the following diseases by receiving the specified number of doses of vaccine by the specified ages:

1. Diphtheria, Tetanus, and Pertussis (Whooping cough) Vaccine - three doses by age one year of toxoids of diphtheria and tetanus, combined with pertussis vaccine.

2. Poliomyelitis Vaccine, trivalent type - three doses by age 18 months of attenuated (live) trivalent oral polio virus vaccine or inactivated poliomyelitis vaccine.

3. Measles (Rubeola) Vaccine - one dose at 15 months of age, or by age two years, of further attentuated (live) measles virus vaccine (Schwartz or Moraten). *A second dose shall also be required at the time of initial entry to school* [~~*and at the time of entry to grade six for children who had not received a second dose earlier*~~] . [*For those children who did not receive a second dose at initial school entry, a second dose shall be required at the time of entry to grade six.*]

4. Rubella (German measles) Vaccine - one dose at 15 months of age or by age two years of attenuated (live) rubella virus vaccine.

5. Mumps Vaccine - one dose at 15 months of age or by age two years of mumps virus vaccine (live).

6. Haemophilus influenzae type b (Hib) vaccine - a maximum of four doses of Hib vaccine for children up to 30 months of age as appropriate for the child's age and in accordance with current recommendations of either the American Academy of Pediatrics or the U.S. Public Health Services.

§ 5.2. Obtaining immunization.

The required immunizations may be obtained from a physician licensed to practice medicine or from the local health department.

PART VI.
VENEREAL DISEASE.

§ 6.1. Prenatal testing.

Every physician attending a pregnant woman during gestation shall examine and test such woman for syphilis within 15 days after beginning such attendance. A second prenatal test for syphilis shall be conducted at the beginning of the third trimester (28 weeks) for women who are at higher risk for syphilis. Persons at higher risk for syphilis include those who have had multiple sexual partners within the previous year and those with any prior history of a sexually transmitted disease. If the patient first seeks care during the third trimester, only one test shall be required. Every physician should also examine and test a pregnant woman for any sexually transmitted disease as clinically indicated.

PART VII.
PREVENTION OF BLINDNESS FROM OPHTHALMIA NEONATORUM.

§ 7.1. Procedure for preventing ophthalmia neonatorum.

The physician, nurse or midwife in charge of the delivery of a baby shall install in each eye of that newborn baby as soon as possible after birth one of the following: (i) two drops of a 1.0% silver nitrate solution; (ii) two drops of a 1.0% tetracycline ophthalmic solution; (iii) one quarter inch or an excessive of 1.0% tetracycline ophthalmic ointment; or (iv) one quarter inch or an excessive amount of 0.5% erythromycin ophthalmic ointment. This treatment shall be recorded in the medical record of the infant.

PART VIII.
CANCER REPORTING.

§ 8.1. Authority.

Title 32.1 (§ 32.1-70) of the Code of Virginia authorizes the establishment of a statewide cancer registry.

§ 8.2. Reportable cancers.

Newly diagnosed malignant tumors or cancers, as defined in Part I, shall be reported to the Virginia [~~Tumor~~ *Cancer*] Registry in the department.

§ 8.3. Those required to report.

Any person in charge of a medical care facility or independent pathology laboratory which diagnoses or treats cancer patients is required to report. Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

§ 8.4. Data which must be reported.

Each report shall include the patient's name, address, age, sex, date of diagnosis, primary site of cancer, histology, basis of diagnosis, and history of service in the Vietnam war and exposure to dioxin-containing compounds. Medical care facility reports shall also include social security number, date of birth, race, marital status, usual occupation, and usual industry.

The reporting requirement may be met by submitting a copy of the hospital facesheet and pathology report to the Virginia [~~Tumor~~ *Cancer*] Registry. Reports shall be made within four months of the diagnosis of cancer.

§ 8.5. Additional data which may be reported.

Any person in charge of a medical care facility may also elect to provide more extensive clinical information as required for cancer programs approved by the American College of Surgeons. These additional data may include staging, treatment, and recurrence information and may be reported by submitting a hospital abstract to the Virginia [~~Tumor~~ *Cancer*] Registry within six months of the diagnosis of cancer. Annual follow-up may be conducted on persons reported in this manner.

PART IX.
REPORTING AND CONTROL OF DISEASES.

§ 9.1. Reporting and control of diseases.

Chapter 2 (§ 32.1-35 et seq.) of Title 32.1 of the Code of Virginia relating to the Reporting and Control of Diseases is incorporated by reference and made a part of these regulations.

PART X.
MEMORY LOSS DISORDER REPORTING.

§ 10.1. Authority.

Article 9.1 (§ 32.1-71.1 et seq.) of Chapter 2 of Title 32.1 of the Code of Virginia authorizes the establishment of a statewide Alzheimer's Disease and related disorders registry.

§ 10.2. Provisions.

Each *nursing facility,* hospital, clinic, individual practitioner or other ~~health care provider may~~ *agency or facility providing health care shall* report to the registry, on forms provided by the registry *or other forms approved by the Registry Director* , information regarding persons ~~in his care~~ *who are in the care of the provider and* who have been diagnosed as having a memory loss disorder, as defined in Part I. Any person making such report shall be immune from liability as provided by § 32.1-38 of the Code of Virginia.

Form Epi-1, Front
Revised April 30, 1993

Virginia Department of Health
Office of Epidemiology
Confidential Morbidity Report

Patient's Name (Last, First):	Telephone Numbers: Home ( )____-____ Work ( )____-____
Patient's Address (Street, City or Town, State, Zip Code):	City or County of Residence:
Date of Birth: / Age:	Race: ☐ Asian ☐ White ☐ Black ☐ Other (Specify): / Hispanic: ☐ Yes ☐ No / Sex: ☐ F ☐ M
Disease or Condition:	Case Status: ☐ Confirmed ☐ Suspected
Date of Onset: / Date of Diagnosis:	**Influenza:** (Report # and type only. No patient identification). Number of Cases: Type, if known:
Physician Name: / Address:	Phone: ( ) ____-____
Hospital Admission? ☐ Yes ☐ No / Date of Admission:	Hospital Name: / Chart ID No.:
[illegible]	
Source of Specimen:	Date Collected:
Laboratory Test:	
Results:	
Name/Address of Lab:	
[illegible]	
Comments: (Risk Situation [Foodhandling, Patient Care, Day Care], STD/HIV Treatment, Immunization Status, Signs/Symptoms, Date of Death, Exposure, Social Security Number, etc.)	
Reported by:	Date Reported:
Address and Phone:	Check Here if You Need More of These Forms. ☐
For Health Department Use:	Date Received:

Shaded fields indicate minimum information necessary (ignore for reports of influenza). Form Epi-1, 1993

Mail the top two copies to your local health department. Retain the third copy for your files. Thank you.

Form Epi-1, Back
Revised April 30, 1993

REGISTRAR OF REGULATIONS

Virginia Department of Health, Office of Epidemiology 93 MAY 11 P3:04

P.O. Box 2448, Richmond, VA 23218-2448

Please report the following diseases (and any other disease or outbreak of public health importance) in the manner required by Section 32.1-36 of the Health Laws of Virginia and Section 3.2A of the Board of Health *Regulations for Disease Reporting and Control.* Enter as much information as possible on the reporting form.

Acquired immunodeficiency syndrome
Amebiasis
ANTHRAX *
Arboviral infection
Aseptic meningitis
Bacterial meningitis (specify etiology)
BOTULISM
Brucellosis
Campylobacter infection * (excluding *C. pylori*)
Chancroid
Chickenpox
Chlamydia trachomatis infection *
Congenital rubella syndrome
DIPHTHERIA *
Encephalitis
primary (specify etiology)
post-infectious
FOODBORNE OUTBREAK
Giardiasis
Gonorrhea *
Granuloma inguinale
HAEMOPHILUS INFLUENZAE INFECTION, INVASIVE *
HEPATITIS A *
Hepatitis B
Hepatitis Non-A Non-B
Hepatitis Unspecified
Histoplasmosis
Human immunodeficiency virus (HIV) infection *
Influenza *¶
Kawasaki syndrome
Lead - elevated levels in children *~
Legionellosis *
Leprosy
Leptospirosis
Listeriosis *
Lyme disease
Lymphogranuloma venereum
Malaria *
MEASLES (RUBEOLA)
MENINGOCOCCAL INFECTION *
Mumps
Nosocomial outbreak
Occupational illness
Ophthalmia neonatorum
Pertussis (Whooping cough) *
Phenylketonuria (PKU)
PLAGUE *
POLIOMYELITIS *
PSITTACOSIS
Q fever
Rabies in animals *
RABIES IN MAN
Rabies treatment, post-exposure
Reye syndrome
Rocky Mountain spotted fever
Rubella (German measles)
Salmonellosis *
Shigellosis *
SMALLPOX
Syphilis, all stages*
PRIMARY AND SECONDARY
Tetanus
Toxic shock syndrome
Toxic substance related illness
Trichinosis *
TUBERCULOSIS (Mycobacteria*)
Tularemia
Typhoid fever
Typhus, flea-borne
Vibrio infection,
including CHOLERA*
WATERBORNE OUTBREAK
YELLOW FEVER

UPPER CASE indicates conditions that must be reported by physicians and directors of medical care facilities by rapid reporting to the local health director via telecommunication. Report all other diseases within seven days.

* These are the only conditions reportable by directors of laboratories. These and all other conditions are reportable by physicians and directors of medical care facilities as well.

¶ Physicians and directors of medical care facilities should report influenza by number of cases only (and type of influenza, if available).

~A blood lead level of 15 ug/dL or higher in children age 0-15.

* * * * * * * *

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

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

Effective Date: July 1, 1993.

Summary:

The amendments to the Virginia Medical Care Facilities Certificate of Public Need (COPN) Rules and Regulations bring the current regulations into compliance with the recent amendment to the Virginia Medical Care Facilities Certificate of Public Need law which became effective on July 1, 1992. The amendments (i) expand the range of project categories which require COPN approval by the State Health Commissioner prior to initiation; (ii) allow the replacement of certain major medical equipment without the issuance of a COPN under certain circumstances; (iii) eliminate the current registration and data reporting requirements for certain types of medical care facility and capital expenditure projects; (iv) provide a process for expediting the review of certain review projects; (v) eliminate the scheduled sunset of COPN review requirements for ambulatory surgery centers and hospitals; and (vi) extend the moratorium on the issuance of COPNs for nursing home bed projects from June 30, 1993, to June 30, 1994, and provide several additional exemptions to the moratorium.

With the exception of the process for expediting reviews, the amendments were first promulgated as emergency regulations effective July 10, 1992.

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

PART I.
DEFINITIONS.

§ 1.1. *Definitions.*

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

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

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

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

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

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

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. *Such expenditure shall also include a series of related expenditures during a 12-month period or a financial obligation or a series of related financial obligations made during a 12-month period by or in behalf of a medical care facility.* Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. See definition of "person."

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

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

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

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

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

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

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

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

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

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

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

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

"Medical care ~~facilities~~ *facility"* means any institution, place, building, or agency, *at a single site,* whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of these regulations, only the following medical care facility classifications shall be subject to review:

~~1. *"Medical care facility classifications"* means the following:~~

~~a.~~ *1.* General hospitals.

~~b.~~ *2.* Sanitariums.

~~c.~~ *3.* Nursing homes.

~~d.~~ *4.* Intermediate care facilities.

~~e.~~ *5.* Extended care facilities.

~~f.~~ *6.* Mental hospitals.

~~g.~~ *7.* Mental retardation facilities.

~~h.~~ *8.* Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

~~i.~~ *9.* Specialized centers or clinics *or that portion of a physician's office* developed for the provision of out-patient or ambulatory surgery *, cardiac catheterization, computed tomographic (CT) scanning, gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT) scanning, or such other specialty services as may be designated by the board by regulation.*

~~j.~~ *10.* Rehabilitation hospitals.

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

For purposes of the regulations, the following medical

care facility classifications shall not be subject to review:

~~a.~~ *1.* Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

~~b.~~ *2.* Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

3. Any physician's office, except that portion of the physician's office which is described in subdivision 9 of the definition of "medical care facility."

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

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

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

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

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

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

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include *the following:*

1. The applicant for a certificate of public need;

2. The regional health planning agency for the health planning region in which the proposed project is to be located;

3. Any resident of the geographic area served or to be served by the applicant;

4. Any person who regularly uses health care facilities within the geographic area served or to be served by the applicant;

5. Any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review;

6. Third party payors who provide health care insurance or prepaid coverage to 5.0% or more patients in the health planning region in which the project is proposed to be located; and

7. Any agency which reviews or establishes rates for health care facilities.

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

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

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. See § ~~6.3~~ *7.3* on Progress.

"Project" means:

1. The establishment of a medical care facility. See definition of "medical care facility."

2. An increase in the total number of beds *or operating rooms* in an existing or authorized medical care facility.

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

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

5. The introduction into an existing medical care facility of any new ~~open heart surgery, psychiatric, medical rehabilitation, or substance abuse treatment service which the facility has never provided or has not provided in the previous 12 months.~~ *cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), medical rehabilitation, neonatal special care services, obstetrical services, open heart surgery, positron emission tomographic (PET) scanning, organ or tissue transplant service, radiation therapy, single photon emission computed tomography (SPECT), psychiatric, substance abuse treatment, or such other specialty clinical services as may be designated by the board by regulation, which the facility has never provided or has not provided in the previous 12 months.*

6. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), gamma knife surgery, lithotripsy, magnetic resonance imaging (MRI), magnetic source imaging (MSI), open heart surgery, positron emission tomographic (PET) scanning, radiation therapy, single photon emission computed tomography (SPECT), or other specialized service designated by the board by regulation, except for the replacement of any medical equipment identified in this part which the commissioner has determined to be an emergency in accordance with § 3.5 of these regulations.

7. Any capital expenditure of $1 million or more by or on behalf of a medical care facility which is not defined as reviewable under [subdivisions 1 through 6 of] this definition. See definition of "capital expenditure."

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

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

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

~~*"Registration"* means the recordation of the establishment of certain new or expansion of existing clinical health services, acquisition of certain major medical equipment or initiation of certain capital expenditures as required by §§ 3.2 and 3.3.~~

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

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

1. Changes the site;

2. Increases the capital expenditure amount ~~approved~~ *authorized by the commissioner on the certificate of public need issued* for the project by 10% or more;

3. Changes the service(s) proposed to be offered;

4. Extends the schedule for completion of the project beyond three years (36 months) from the date of certificate issuance or beyond the time period approved by the commissioner at the date of certificate issuance, whichever is greater. See §§ ~~6.2 and 6.3~~ *7.2 and 7.3* .

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

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. In developing the plan, the Board of Health shall take into consideration the policies and recommendations contained

in the State Health Plan. The most recent applicable State Medical Facilities Plan shall remain in force until any such regulation is amended, modified or repealed by the Board of Health.

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

PART II.
GENERAL INFORMATION.

§ 2.1. Authority for regulations.

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

§ 2.2. Purpose of rules and regulations.

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

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the following:

A. State Board of Health.

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

B. State Health Commissioner.

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

§ 2.4. Public meetings and public hearings.

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

§ 2.5. Official records.

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

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

§ 2.6. Application of rules and regulations.

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

~~§ 2.7. Effective date of rules and regulations.~~

~~These rules and regulations shall become effective June 6, 1992.~~

~~§ 2.8.~~ *§ 2.7.* Powers and procedures of regulations not exclusive.

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

~~§ 2.9.~~ *§ 2.8.* Annual report.

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

PART III.
MANDATORY REQUIREMENTS.

§ 3.1. Requirements for reviewable medical care facility projects.

Prior to initiating a reviewable medical care facility project the owner or sponsor shall obtain a certificate of

public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in § ~~3.7~~ *§ 3.2* of these regulations shall be met.

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

~~At least 30 days prior to (i) establishing a new or expanding an existing clinical health service or (ii) the date of contractual obligation or other commitment to acquire any major medical equipment with an expenditure or expenditure value of $400,000 or more which is not defined as a project under these regulations, and has not been previously authorized by the commissioner prior to July 1, 1989, the owner of any medical care facility listed in these regulations, physician's office, or specialized center or clinic shall register such services or acquisitions of equipment with the commissioner. The format for registration shall be prescribed by the commissioner and shall include information concerning the owner and operator, description, site, capital, financing and lease costs, beginning date and hours of operation of clinical health service and major medical equipment. For purposes of registration, (i) owner shall include any person offering affected clinical health services and major medical equipment and (ii) affected clinical health services and major medical equipment shall include only the following:~~

~~1. radiation therapy;.~~

~~2. cardiac catheterization;~~

~~3. obstetrical;~~

~~4. neonatal special care unit;~~

~~5. lithotripsy;~~

~~6. magnetic resonance imaging;~~

~~7. position emission tomography (PET) scanning;~~

~~8. computed tomography (CT) scanning;~~

~~9 heart, lung, and kidney, other major internal organ or tissue transplants~~

~~10. other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the commissioner.~~

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

~~§ 3.3. Requirements for registration of capital expenditures.~~

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

~~§ 3.4. Reporting requirements for registered services and equipment.~~

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

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

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

~~§ 3.6. Confidentiality of information.~~

~~Information provided to the department by persons to satisfy registration requirements set forth in §§ 3.2 and 3.3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in § 2.1-342 of the Code of Virginia until such time as the new or expanded clinical health service becomes operational. In accordance with this provision, the department shall not provide information it receives about registered services to any person until the new or expanded service becomes operational. Persons registering~~

~~the new service or equipment or capital expenditure shall notify the department in writing of the date the service or equipment becomes operational or the expenditure is made and provide a copy of this notification to the appropriate regional health planning agency.~~

§ ~~3.7.~~ *§ 3.2.* Requirement for notification of proposed acquisition of medical care [~~facilities~~ *facility*].

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

§ ~~3.8.~~ *§ 3.3.* Significant change limitation.

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

§ ~~3.9.~~ *§ 3.4.* Requirements for health maintenance organizations *(HMO)* .

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisition of medical care facilities if appropriate. See definition of "project" and § ~~3.7~~ *§ 3.2* .

§ 3.5. Requirements for emergency replacement of equipment.

The commissioner shall consider requests for emergency replacement of medical equipment as identified in Part I of these regulations. Such an emergency replacement is not a "project" of a medical care facility requiring a certificate of public need. To request authorization for such replacement, the owner of such equipment shall submit information to the commissioner to demonstrate that (i) the equipment is inoperable as a result of a mechanical failure, Act of God, or other reason which may not be attributed to the owner and the repair of such equipment is not practical or feasible; or (ii) the immediate replacement of the medical equipment is necessary to maintain an essential clinical health service or to assure the safety of patients or staff.

For purposes of this section, "inoperable" means that the equipment cannot be put into use, operation, or practice to perform the diagnostic or therapeutic clinical health service for which it was intended.

Within 15 days of the receipt of such requests the commissioner will notify the owner in the form of a letter of the decision to deny or authorize the emergency replacement of equipment.

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

§ 4.1. *Required considerations.*

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

~~A.~~ *1.* The recommendation and the reasons therefor of the appropriate regional health planning agency.

~~B.~~ *2.* The relationship of the project to the applicable health plans of the regional health planning agency, and the Virginia Health Planning Board and the Board of Health.

~~C.~~ *3.* The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

~~D.~~ *4.* The need that the population served or to be served by the project has for the project.

~~E.~~ *5.* The extent to which the project will be accessible to all residents of the area proposed to be served.

~~F.~~ *6.* The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which the project is proposed.

~~G.~~ *7.* Less costly or more effective alternate methods of reasonably meeting identified health service needs.

~~H.~~ *8.* The immediate and long-term financial feasibility of the project.

~~I.~~ *9.* The relationship of the project to the existing health care system of the area in which the project is proposed.

~~J.~~ *10.* The availability of resources for the project.

~~K.~~ *11.* The organizational relationship of the project to necessary ancillary and support services.

~~L.~~ *12.* The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.

~~M.~~ *13.* The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.

~~N.~~ *14.* The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

~~O.~~ *15.* The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other maintenance organizations in a reasonable and cost effective manner.

~~P.~~ *16.* The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

~~Q.~~ *17.* The costs and benefits of the construction associated with the proposed project.

~~R.~~ *18.* The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

~~S.~~ *19.* Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

~~T.~~ *20.* In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed.

PART V.
REVIEW PROCESS.

§ 5.1. Preconsultation.

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

§ 5.2. Application forms.

A. Letter of intent.

~~At least 30 days prior to submission of an application,~~ An applicant shall file a letter of intent with the commissioner to request appropriate application forms *by the later of (i) 30 days prior to the submission of an application for a project included within a particular batch group or (ii) 10 days after the first letter of intent is filed for a project within a particular batch group to be located within the same health planning region as that of the applicant* . The letter shall identify the owner, the type of project for which an application is requested, and the proposed scope (size) and location of the proposed project. A copy of the letter shall also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within seven days of the receipt of the letter of intent.[*A letter of intent filed with the department shall be considered void one year after the date of receipt of such letter.*] *See § 6.4 C.*

B. Application fees.

The department shall collect application fees for applications submitted requesting a certificate of public need. The fee required for an application is the lesser of 0.5% of the proposed capital expenditure for the project or $5,000. No application will be deemed to be complete for review until the required application fee is paid. *See § 6.4 C.*

C. Filing application forms.

Applications must be submitted at least 40 days prior to the first day of a scheduled review cycle to be considered for review in the same cycle. All applications including the required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency ; ~~and the application fee has been paid to the department~~ . No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency , *and the application fee has been paid to the department* .[*See § 5.4.)*]

§ 5.3. Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable and the application fee submitted. Additional information required to complete an application shall be submitted to the department and the appropriate regional health planning agency *at least* five days prior to the first day of a review cycle to be considered complete for review in the same review cycle. In the event that the first day of a review cycle falls on the weekend, the review of the completed application will begin on the next work day. [*See § 5.4.)*]

§ 5.4. One hundred twenty-day review cycle.

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

BATCH GROUP	GENERAL DESCRIPTION	REVIEW CYCLE Begins	Ends
A	General *hospitals/* ~~Hospital Beds/ Ambulatory Surgery Centers~~ *Obstetrical Services/ Neonatal Special Care Services*	Feb. 10 Aug. 10	June 10 Dec. 8
~~B~~	~~Psychiatric Facility Beds/ Services~~	~~Apr. 10~~ ~~Oct. 10~~	~~Aug. 8~~ ~~Feb. 7~~
B	*Open Heart Surgery/Cardiac Catheterization/Ambulatory Surgery Centers/ Operating Room Additions/Transplant Services*	*Mar. 10* *Sep. 10*	*July 8* *Jan. 8*
~~C~~	~~Medical Rehabilitation Beds/ Services~~	~~Jun. 10~~ ~~Dec. 10~~	~~Oct. 8~~ ~~Apr. 9~~
C	*Psychiatric Facilities/ Substance Abuse Treatment/ Mental Retardation Facilities*	*Apr. 10* *Oct. 10*	*Aug. 8* *Feb. 7*
~~D~~	~~Open Heart Surgery Services~~	~~Feb. 10~~ ~~Aug. 10~~	~~Jun. 10~~ ~~Dec. 8~~
D	*Diagnostic Imaging Facilities/ Services*	*May 10* *Nov. 10*	*Sep. 7* *Mar. 10*
~~E~~	~~Substance Abuse Treatment Beds/Services/Mental Retardation Facilities~~	~~Apr. 10~~ ~~Oct. 10~~	~~Aug. 8~~ ~~Feb. 7~~
E	*Medical Rehabilitation Beds/ Services*	*June 10* *Dec. 10*	*Oct. 8* *Apr. 9*
F	*Selected Therapeutic Facilities/ Services*	*July 10* *Jan. 10*	*Nov. 7* *May 9*
~~F~~ G	Nursing Home Beds/Services		
	Planning Districts 6, 11 & 22	Feb. 10	June 10
	Planning Districts 1, 9, 13 & 20	Apr. 10	Aug. 8
	Planning Districts 3, 8, 14 & 16	June 10	Oct. 8
	Planning Districts 5, 17, 18 & 19	Aug. 10	Dec. 8
	Planning Districts 2, 10 & 15	Oct. 10	Feb. 7
	Planning Districts 4, 7, 12 & 21	Dec. 10	Apr. 9

Batch Group A includes:

1. The establishment of a ~~new~~ general hospital.

2. An increase in the total number of general acute care beds in an existing or authorized general hospital.

3. The relocation *at the same site* of 10 general hospital beds or 10% of the general hospital beds of a ~~general hospital~~ *medical care facility* , whichever is less, from one existing physical facility to any other in any two-year period.

~~4. The establishment of a new ambulatory surgery center.~~

4. The introduction into an existing medical care facility of any new neonatal special care or obstetrical services which the facility has [~~never provided or has~~] not provided in the previous 12 months.

5. Any capital expenditure of $1 million or more, not defined as a project category included in Batch Groups B through G, by or in behalf of a general hospital.

Batch Group B includes:

~~1. The establishment of a new mental hospital or psychiatric hospital.~~

~~2. An increase in the total number of beds in an existing or authorized mental hospital or psychiatric hospital.~~

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

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

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

1. The establishment of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

2. An increase in the total number of operating rooms in an existing medical care facility or establishment of operating rooms in a new facility.

3. The introduction into an existing medical care facility of any new cardiac catheterization, open heart surgery, or organ or tissue transplant services which the facility has [~~never provided or has~~] not provided in the previous 12 months.

4. The addition or replacement by an existing medical care facility of any medical equipment for the provision of cardiac catheterization services.

5. Any capital expenditure of $1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a specialized center, clinic, or portion of a physician's office developed for the provision of outpatient or ambulatory surgery or cardiac catheterization services.

6. Any capital expenditure of $1 million or more, not defined as a project category in Batch Group A or Batch Groups C through G, by or in behalf of a medical care facility, which is primarily related to the provision of surgery, cardiac catheterization, open heart surgery, or organ or tissue transplant services.

Batch Group C includes:

~~1. The establishment of a new medical rehabilitation hospital.~~

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

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

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

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

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

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

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

4. The relocation at the same site of 10 mental

hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds or 10% of the mental hospital, psychiatric hospital, substance abuse treatment and rehabilitation, or mental retardation beds of a medical care facility, whichever is less, from one existing physical facility to another in any two-year period.

5. The introduction into an existing medical care facility of any new psychiatric or substance abuse treatment service which the facility [~~*has never provided or*~~] *has not provided in the previous 12 months.*

6. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a mental hospital, psychiatric hospital, intermediate care facility established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts, or mental retardation facilities.

7. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A and B or Batch Groups D through G, by or in behalf of a medical care facility, which is primarily related to the provision of mental health, psychiatric, substance abuse treatment or rehabilitation, or mental retardation services.

Batch Group D includes:

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

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

2. The introduction into an existing medical care facility of any new computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT) services which the facility [~~*has never provided or*~~] *has not provided in the previous 12 months.*

3. The addition or replacement by an existing medical care facility of any equipment for the provision of computed tomography (CT), magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

4. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

5. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through C or Batch Groups E through G, by or in behalf of a medical care facility, which is primarily related to the provision of computed tomographic (CT) scanning, magnetic resonance imaging (MRI), magnetic source imaging (MSI), positron emission tomographic (PET) scanning, or single photon emission computed tomography (SPECT).

Batch Group E includes:

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

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

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

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

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

1. The establishment of a medical rehabilitation hospital.

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

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

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

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

6. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical rehabilitation hospital.

7. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through D or Batch Groups F and G, by or in behalf of a medical care facility, which is primarily related to the provision of medical rehabilitation services.

Batch Group F includes:

1. The establishment of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

2. Introduction into an existing medical care facility of any new gamma knife surgery, lithotripsy, or radiation therapy services which the facility has never provided or has not provided in the previous 12 months.

3. The addition or replacement by an existing medical care facility of any medical equipment for the provision of gamma knife surgery, lithotripsy, or radiation therapy.

4. Any capital expenditure of $1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a specialized center, clinic, or that portion of a physician's office developed for the provision of gamma knife surgery, lithotripsy, or radition therapy.

5. Any capital expenditure of $1 million or more, not defined as a project in Batch Groups A through E or Batch Group G, by or in behalf of a medical care facility, which is primarily related to the provision of gamma knife surgery, lithotripsy, or radiation therapy.

Batch Group ~~F~~ *G* includes:

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

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

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

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

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

6. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a nursing home, intermediate care facility, or extended care facility.

7. Any capital expenditure of $1 million or more, not defined as a project category in Batch Groups A through F, by or in behalf of a medical care facility, which is primarily related to the provision of nursing home, intermediate care, or extended care services.

§ 5.5. Requests for application (RFA).

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

§ 5.6. Consideration of applications.

Applications for the same or similar services which are proposed for the same planning district or medical service area shall be considered as competing applications by the

commissioner. The commissioner shall determine ~~if~~ *whether* an application is competing and shall provide written notification to the competing applicants and the regional health planning agency. The commissioner may, upon the request of an applicant, waive the review schedule requirements of § 5.4 in the case of a documented emergency *or in cases where, as of the deadline for filing a letter of intent for the otherwise applicable cycle, there are no competing applicants, and the applicant who has filed a letter of intent for a particular project proposes to combine the intended project with another related project for which an application will be filed in a subsequent batch group .*

§ 5.7. Review of complete application.

A. Review cycle.

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

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

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

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

B. Regional health planning agency required notifications.

Upon notification of the acceptance date of a complete application as set forth in subsection A of § ~~6.6 of these regulations~~ *this section* , the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically identifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in these rules and regulations, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape recording of the public hearing. Such public hearing record shall be maintained for at least a one-year time period following the final decision on a certificate of public need application. See definition of "public hearing."

C. Ex parte contact.

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

§ 5.8. Participation by other persons.

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

§ 5.9. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in

Part V of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with § ~~3.8~~ *§ 3.3* of the regulations.

§ 5.10. Withdrawal of an application.

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

§ 5.11. Action on an application.

A. Commissioner's responsibility.

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

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

B. Notification process-extension of review time.

The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycle unless an extension is agreed to by the applicant and an informal fact-finding conference described in § 5.7 is held. When an informal fact-finding conference is held, the 120-day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant.

PART VI.
EXPEDITED REVIEW PROCESS.

§ 6.1. Applicability.

Projects of medical care facilities that satisfy the criteria set forth below as determined by the State Health Commissioner shall be subject to an expedited review process:

1. Relocation at the same site of 10 beds or 10% of the beds, whichever is less, from on existing physical facility to another when the cost of such relocation is less than $1 million.

2. The replacement at the same site by an existing medical care facility of any medical equipment for the provision of cardiac catheterization, computed tomography (CT), lithotripsy, magnetic resonance imaging (MRI), open heart surgery, positron emission tomographic scanning (PET), radiation therapy, or single photon emission computed tomography (SPECT) when the medical care facility meets applicable standards for replacement of such medical equipment which are set forth in the State Medical Facilities Plan.

§ 6.2. Application forms.

A. Obtaining application forms.

Application forms for an expedited review shall be available from the department upon the written request of the applicant. The request shall identify the owner, the type of project for which forms are requested and the location of the proposed project. A copy of this request shall also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within seven days of receipt of such request.

B. Application fees.

The department shall collect application fees for applications submitted requesting a certificate of public need under the expedited review process. The fee required for an application is the lesser of 0.5% of the proposed capital expenditure for the project or $5,000. No application will be reviewed until the required application fee is paid.

C. Filing application forms.

All requests for a certificate of public need in accordance with the expedited review process shall be reviewed by the department and the regional health planning agency which shall each forward a recommendation to the commissioner within 40 days from the date the submitted application has been deemed complete. No application for expedited review shall be deemed to have been submitted until the application form has been received by the department and the appropriate regional health planning agency, has been deemed complete, and the application fee has been paid to the department.

§ 6.3. Participation by other persons.

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

§ 6.4. Action on application.

A. Decisions to approve any project under the expedited review process shall be rendered by the commissioner within 45 days of the receipt of such request. The commissioner shall approve and issue a certificate for any project which is determined to meet the criteria for expedited review set forth in § 6.1.

B. If the commissioner determines that a project does not meet the criteria for an expedited review set forth in § 6.1, the applicant will be notified in writing of such determination within 45 days of the receipt of such request. In such cases, the department will forward the appropriate forms to the project applicant for use in filing an application for review of a project in the appropriate review cycle in accordance with Part V of these regulations.

C. Any project which does not qualify for an expedited review in accordance with § 6.1, as determined by the commissioner, shall be exempted from the requirements of §§ 5.2 A and 5.2 B when such project is filed for consideration in accordance with Part V of these regulations.

PART ~~VI~~ *VII* .
DURATION/EXTENSION/REVOCATION OF CERTIFICATES.

§ ~~6.1~~ *§ 7.1* . Duration.

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

§ ~~6.2~~ *§ 7.2* . Extension.

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

A. Basis for certificate extension within 24 months.

An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in § ~~6.2~~ *§ 7.3* of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate or period of extension.

B. Basis for certificate extension beyond 24 months.

An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) any delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the owner; and (iii) a schedule of completion has been provided and determined to be reasonable. Such request shall be submitted in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate of period of extension. The commissioner shall not grant an extension to the schedule for completion of a project beyond three years (36 months) of the date of certificate issuance or beyond the time period approved at the date of certificate issuance, whichever is greater, unless such extension is authorized in accordance with the provisions for a significant change. See § ~~3.8~~ *§ 3.3* Significant change limitation.

C. Basis for indefinite extension.

A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in subsection C of § ~~6.3~~ *§ 7.3* .

D. Regional health planning agency review.

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

health planning agency.

E. Notification of decision.

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

§ ~~6.3~~ *§ 7.3* . Demonstration of progress.

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

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

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

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

§ ~~6.4~~ *§ 7.4* . Revocation of certificate.

A. Lack of progress.

Failure of any project to meet the progress requirements stated in § ~~6.3~~ *§ 7.4* shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in § ~~6.3~~ *§ 7.3* .

B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § ~~6.3~~ *§ 7.3* of these regulations shall be cause for revocation, unless, due to extenuating circumstances, the commissioner, in his sole discretion, extends the certificate, in accordance with subsection B of § ~~6.2~~ *§ 7.2* of these regulations.

C. Unapproved changes.

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

D. Failure to initiate construction.

Failure to initiate construction of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with subsection B of § ~~6.2~~ *§ 7.2* of these regulations.

E. Misrepresentation.

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

F. Noncompliance with assurances.

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

PART ~~VII~~ *VIII* .
APPEALS.

§ ~~7.1~~ *§ 8.1* . Court review.

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

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

B. Designation of judge.

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

C. Court review procedures.

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

D. Further appeal.

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

PART ~~VIII~~ *IX* .
SANCTIONS.

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

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

§ ~~8.2~~ *§ 9.2* . Injunctive relief.

On petition of the commissioner, the Board of Health or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed, undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

PART ~~IX~~ *X* .
OTHER.

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

Notwithstanding any law to the contrary, the Commissioner shall not approve, authorize or accept applications for the issurance of any certificate of public need pursuant to the regulations for a medical care facility project which would increase the number of nursing home beds from the effective date of the regulations through June 30, ~~1993~~ *1994* . However, the commissioner may approve or authorize the issuance of a certificate of public need for the following projects:

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

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

3. The conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 *of the Code of Virginia* as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the less of 30 beds or 25% of the beds in the home for adults facility; (ii) the home for adults facility has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the home for adults facility further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed home for adults facility otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health.

4. Any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by a continuing care provider registered as of January 15, 1991, with the

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

5. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code *of Virginia* , the state home for aged and infirm veterans authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.

6. The development of a project in an existing nursing facility owned and operated by the governing body of a county when (i) the total number of new beds to be added by construction does not exceed the lesser of 30 beds or 25% of the existing nursing home beds in the facility; (ii) the facility has demonstrated that the nursing home beds are needed specifically to serve a specialty heavy care patient population, such as dementia, ventilator-dependent, and AIDS patients; and (iii) the facility has executed an agreement with a state-supported medical college to provide training in geriatric nursing.

7. The development of a nursing facility project located in Albemarle County when (i) the total number of new beds to be constructed does not exceed 30 beds; (ii) the facility is owned by and will be operated as a nonprofit entity; (iii) the project was under construction on February 1, 1992; and (iv) the facility will be ready for occupancy by November 1, 1992.

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

~~Notwithstanding any law to the contrary, as of July 1, 1993, general hospitals and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery shall no longer be medical care facilities subject to review pursuant to these Regulations except with respect to the establishment of nursing home beds in general hospitals.~~

§ ~~9.3.~~ § 10.2. Extension of the schedule of completion for nursing home projects approved prior to January 1, 1991.

Notwithstanding the authority of the commissioner to grant an extension of a schedule for completion of the project pursuant to Part VI of these regulations, no extension shall be granted beyond June 30, 1992, for any nursing home project approved prior to January 1, 1991. However, the commissioner may grant an extension of a schedule for completion for an additional ~~six~~ *nine* months upon determining that (i) substantial and continuing progress has been made toward completion of the project; ~~and~~ (ii) the project owner had agreed in writing prior to February 13, 1991, to delay the project to facilitate cost savings for the Commonwealth ~~.~~ *; and (iii) construction of the project was initiated on or before April 15, 1992. The commissioner may also grant an extension of a schedule for completion for an additional six months to project owners who did not agree in writing prior to February 13, 1991, to delay their projects upon determining that (i) substantial and continuing progress has been made toward completion of the project and (ii) construction of the project was initiated on or before April 15, 1992.* The certificate for any such nursing home bed project approved prior to January 1, 1991, which has not been completed by June 30, 1992, or by the expiration date of any approved extension , *which in no case shall be later than March 31, 1993,* shall be revoked. *However, the commissioner shall not revoke the certificate of public need for:*

1. Any nursing home bed project for 60 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 of the Code of Virginia if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project is initiated by June 30, 1992, and (iii) the facility is completed by June 30, 1993.

2. Any nursing home bed project to add 40 beds to an existing facility if (i) the project owner had agreed to delay the project to facilitate cost savings for the Commonwealth prior to February 13, 1991, (ii) the owner was seeking funding from the Department of Housing and Urban Development prior to February 13, 1992, (iii) the facility receives a feasibility approval for such funding from the Department of Housing and Urban Development by May 1, 1992, and (iv) the facility is completed by June 30, 1993.

3. Any nursing home bed project for less than 30 beds proposed as part of a retirement community that is not a continuing care provider as defined in § 38.2-4900 of the Code of Virginia if (i) the certificate of public need was issued after May 1, 1988, and was in force on November 1, 1991, (ii) construction of the nursing home bed project was initiated before December 1, 1991, (iii) the owner of the nursing home bed project agrees in writing prior to July 1, 1992, to restrict use of the nursing home beds to residents of such retirement community, (iv) construction on the nursing home bed project that was not completed by August 27, 1991, is resumed by August 1, 1993, and (v) the nursing home bed project is completed by July 31, 1994.

COMMONWEALTH OF VIRGINIA

APPLICATION FOR EXPEDITED REVIEW

FOR

CERTIFICATE OF PUBLIC NEED

IN ACCORDANCE WITH

PART VI OF THE

VIRGINIA MEDICAL CARE FACILITIES

CERTIFICATE OF PUBLIC NEED RULES AND REGULATIONS

June 23, 1993

EXPEDITED REVIEW PROCESS

This form is to be used to request an expedited review for certificate of public need ("COPN") projects which may qualify for consideration in accordance with Part VI of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations ("Regulations"). The State Health Commissioner will issue a COPN for those projects which he determines meet the criteria for an expedited review within 45 days of the receipt of an application filed under the expedited review process. The appropriate application fee must accompany all requests for an expedited review as set forth in § 6.2.B. of the Regulations.

The applicant will be required to demonstrate to the satisfaction of the Commissioner that the project being proposed complies with the criteria for an expedited review. If the Commissioner denies a request for an expedited review of a project, the applicant may file an application for review of such project in the appropriate batch cycle in accordance with the process set forth in Part V of the Regulations. In cases when an expedited review is denied by the Commissioner, the project applicant will not be required to file a letter of intent or pay a second application fee to submit such application for review in the appropriate batch cycle. (See § 6.4.C. of the Regulations.)

CRITERIA FOR EXPEDITED REVIEW

Applicability - Projects of medical care facilities that satisfy the criteria set forth below as determined by the State Health Commissioner shall be subject to an expedited review process:

a. Relocation at the same site of ten beds or ten percent of the beds, whichever is less, from one existing physical facility to another when the cost of such relocation is one million dollars or less.

b. The replacement at the same site by an existing medical care facility, of any medical equipment for the provision of cardiac catheterization, computed tomography ("CT"), lithotripsy, magnetic resonance imaging ("MRI"), open heart surgery, positron emission tomographic scanning ("PET"), radiation therapy, or single photon emission computed tomography ("SPECT") when the medical care facility meets applicable standards for replacement of such medical equipment which are set forth in the State Medical Facilities Plan ("SMFP").

CONSIDERATION UNDER THE SECOND CATEGORY FOR EXPEDITED REVIEW

For the second category for expedited review it will be necessary for the project applicant to obtain a copy of the SMFP and review the relevant plan component that addresses the type of medical equipment which is being replaced. The SMFP provides specific criteria and standards for replacement of

equipment within the individual plan components. A project must comply with the relevant SMFP criteria for replacement of equipment in order to qualify for expedited review under the second classification. Therefore, it is incumbent upon an applicant for expedited review to provide all appropriate data and information, as part of its application, to demonstrate that its project complies with the specific criteria in the SMFP. Copies of the SMFP are available from:

Virginia Department of Health
Office of Resources Development
1500 East Main Street, Suite 105
Richmond, Virginia 23219

APPLICATION FORM

Please complete the following form to apply for a COPN under the expedited review process in accordance with Part VI of the Regulations. One copy of the form should be filed with the appropriate regional health planning agency and two copies should be filed with the Department. The Office of Resources Development and the regional health planning agencies may be contacted for assistance and responses to questions concerning the COPN Program at the following addresses and telephone numbers:

Virginia Department of Health Office of Resources Development 1500 E. Main Street, Suite 105 Richmond, Virginia 23219	(804) 786-7463
Northwestern Virginia Health Systems Agency Blue Ridge Hospital Charlottesville, Virginia 22901	(804) 977-6010
Health Systems Agency of Northern Virginia 7245 Arlington Boulevard, Suite 300 Falls Church, Virginia 22042	(703) 573-3100
Southwest Virginia Health Systems Agency 3100A Peters Creek Road, N.W. Roanoke, Virginia 24019	(703) 362-9528
Central Virginia Health Planning Agency 1201 Broad Rock Boulevard Bldg. 507, Suite 317 No., Room 14 Richmond, Virginia 23249 MAIL: P.O. Box 24287 Richmond, Virginia 23224	(804) 233-6206
Eastern Virginia Health Systems Agency 18 Koger Executive Center, Suite 232 Norfolk, Virginia 23502	(804) 461-4834

SECTION I FACILITY ORGANIZATION AND IDENTIFICATION

A. _____
Official Name of Facility

_____
Address

_____
City State Zip Code

_____
Telephone Number

B. _____
Legal Name of Applicant

_____
Address

_____
City State Zip Code

C. Chief Administrative Officer

_____
Name

_____
Address

_____
City State Zip Code

_____
Telephone Number

D. Person(s) to whom questions regarding application should be directed.

_____
Name

_____
Address

_____
City State Zip Code

_____
Telephone Number

E. Type of Control and Ownership (Complete appropriate section for both owner and operator.)

Will the facility be operated by the owner? _____ Yes _____ No

Owner of Facility (Check one)	Proprietary	Operator of Facility (Check One)
(1) _____	(1) Individual	(1) _____
(2) _____	(2) Partnership - attach copy of Partnership Agreement and receipt showing that agreement has been recorded	(2) _____
(3) _____	(3) Corporate - attach copy of Articles of Incorporation and Certificate of Incorporation	(3) _____
(4) _____	(4) Other _____(Identify)	(4) _____
	Non-Profit	
(5) _____	(5) Corporation - attach copy of Articles of Incorporation and Certificate of Incorporation	(5) _____
(6) _____	(6) Other _____(Identify)	(6) _____
	Governmental	
(7) _____	(7) State	(7) _____
(8) _____	(8) County	(8) _____
(9) _____	(9) City	(9) _____
(10) _____	(10) City/County	(10) _____
(11) _____	(11) Hospital Authority or Commission	(11) _____
(12) _____	(12) Other _____(Identify)	(12) _____

F. Ownership of the Site (Check one and attach copy of document).

(1) _____ Fee simple title held by the applicant

(2) _____ Option to purchase held by the applicant

(3) _____ Leasehold interest for not less than _____ years

(4) _____ Renewable lease, renewable every _____ years

(5) _____ Other _____(Identify)

G. Attach a list of names and addresses of all owners or persons having a financial interest of five percent (5%) or more in the medical care facility.

(a) In the case of a proprietary corporation also attach:

(1) A list of the names and addresses of the board of directors of the corporation.

(2) A list of the officers of the corporation.

(3) The name and address of the registered agent for the corporation.

(b) In the case of a non-profit corporation also attach:

(1) A list of the names and addresses of the board of directors of the corporation.

(2) A list of the officers of the corporation.

(3) The name and address of the registered agent for the corporation.

(c) In the case of a partnership also attach:

(1) A list of names and addresses of all partners.

(2) The name and address of the general or managing partner.

(d) In the case of other types of ownership, also attach such documents as will clearly identify the owner.

H. List all subsidiaries wholly or partially owned by the applicant.

I. List all organizations of which the applicant is a wholly or partially owned subsidiary.

J. If the operator is other than the owner, attach a list of the name(s) and address(es) of the operator(s) of the medical care facility project. In the case of a corporate operator, specify the name and address of the Registered Agent. In the case of partnership operator, specify the name and address of the general or managing partner.

K. If the operator is other than the owner, attach an executed copy of the contract or agreement between the owner and the operator of the medical care facility.

SECTION II PROJECT IDENTIFICATION

A. Type of project for which a certificate of public need is being requested. (Check all that may be applicable).

(1) _____ Relocation at the same site of beds from one physical facility to another

(2) Replacement at the same site by an existing medical care facility of any medical equipment for the provision of

____ cardiac catheterization
____ computed tomography (CT)
____ lithotripsy
____ magnetic resonance imaging (MRI)
____ positron emission tomographic scanning (PET)
____ single photon emission computed tomography (SPECT)

B. Provide a full, but concise description of t e proposed project. For equipment replacements, describe the specific quipment now available at the site and the type of equipment which is proposed to be acquired (include a copy of the manufacturer's quotation for new equipment).

C. For bed relocations:

1. Identify the present site of the beds to be relocated.

a. Site: _____ acres or square feet

b. Address or directions _____

_____

_____

2. Identify the proposed new location of the beds

a. Site: _____ acres or square feet

b. Address or directions _____

_____

_____

D. For equipment replacements:

1. Identify the location of the proposed equipment if the location is different is different from the present location of the existing equipment.

a. Site: _____ square feet

b. Address or directions _____

_____

_____

E. If the bed complement at the facility will change as a result of the project, complete the relevant portions of the following chart:

	Distribution of Existing Beds	Total Beds to be Lost or Removed from Service	Total Beds After Construction (Should equal sum of Columns 1 and 2)
Medical/Surgical			
Obstetrical			
Pediatric			
Psychiatric			
Rehabilitation			
Intensive/Coronary Care			
Long-Term/Extended Care			
Self Care			
Other (Specify)			
_____			
_____			
_____			
_____			
TOTAL			

SECTION III

For equipment purchases - Attach all documentation showing that the project complies with the relevant section of the State Medical Facilities Plan for "Replacement" of the medical equipment.

SECTION IV

Provide a timetable for completion of the project.

SECTION V FINANCIAL DATA

1.	Direct Construction Costs	$_____
2.	Equipment not included in construction contract	$_____
3.	Site Acquisition Costs	$_____
4.	Site Preparation Costs	$_____
5.	Off Site Costs	$_____
6.	Architectural and Engineering Fees	$_____
7.	Other Consultant Fees	$_____
8.	Taxes During Construction	$_____
9.	HUD-232 Financing	$_____
10.	Industrial Development Authority Revenue & General Revenue Bond Financing	$_____
11.	Conventional Loan Financing	$_____
12.	Other (Specify) _____	$_____
13.	**TOTAL CAPITAL COSTS (Add Lines 1 thru 12)**	$_____
14.	Percent of total construction costs to be financed	_____
15.	Dollar amount of long term mortgage	$_____
16.	Interest cost on long term financing	
	a. HUD-232 Financing	$_____
	b. Industrial Development Authority Revenue & General Revenue Bond Financing	$_____
	c. Conventional Loan Financing	$_____
	d. Other (Specify) _____	$_____
17.	**TOTAL INTEREST COST ON LONG TERM FINANCING (Add Lines 16a, b, c, and d)**	$_____
18.	Anticipated Bond discount	
	a. HUD-232 Financing	$_____
	b. Industrial Development Authority Revenue & General Revenue Bond Financing	$_____
	c. Conventional Loan Financing	$_____
	d. Other (Specify) _____	$_____
19.	**TOTAL ANTICIPATED BOND DISCOUNT (Add Lines 18a, b, c, and d)**	$_____
20.	**TOTAL PROJECT COST (Capital and Financing Costs) (Add Lines 13, 17, and 19)**	$_____

SECTION VI **ASSURANCES**

I hereby assure and certify that the information included in this application is correct to the best of my knowledge and belief and that it is my intent to carry out the proposed project as described, to the extent it is approved and no more.

Signature of Authorizing Officer	Address Ln 1
Type or Print Name of Authorizing Officer	Address Ln 2
Title of Authorizing Officer	City, State and Zip
Date	Telephone Number

Copies of the request should be sent to:

A. **Virginia Department of Health**
Office of Resources Development
1500 E. Main Street, Suite 105
Richmond, Virginia 23219
(Send two copies)

B. **The regional health planning agency which serves the area where the project will be located.**
(Send one copy)

* * * * * * * *

Title of Regulation: **1987 State Medical Facilities Plan (REPEALED).**

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

Effective Date: July 1, 1993.

Summary:

The repeal of the 1987 State Medical Facilities Plan is necessary to allow the implementation of the new State Medical Facilities Plan which is currently being promulgated by the Board of Health. The 1987 State Medical Facilities Plan provides statistical information and projections of need for medical services and facilities which were subject to review in accordance with the former Certificate of Public Need statute. The new State Medical Facilities Plan will provide the Department of Health all necessary guidance for making decisions on Certificate of Public Need projects that are submitted for review under the recently amended Certificate of Public Need law. The new State Medical Facilities Plan is, therefore, intended to supercede the 1987 State Medical Facilites Plan and, therefore, the repeal of the latter is warranted.

REGISTRAR'S NOTICE: Due to its length, the Virginia State Medical Facilities Plan filed by the Department of Health is not being published. However, in accordance with § 9-6.14:22 of the Code of Virginia, a 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 Department of Health, 1500 E. Main Street, Room 105, Richmond, Virginia.

Title of Regulations: **VR 355-30-100. Virginia State Medical Facilities Plan.**
VR 355-30-101. General Acute Care Services.
VR 355-30-102. Perinatal Services.
VR 355-30-103. Cardiac Services.
VR 355-30-104. General Surgical Services.
VR 355-30-105. Organ Transplantation Services.
VR 355-30-106. Psychiatric/Substance Abuse Treatment Services.
VR 355-30-107. Mental Retardation Services.
VR 355-30-108. Medical Rehabilitation Services.
VR 355-30-109. Diagnostic Imaging Services.
VR 355-30-110. Lithotripsy Services.
VR 355-30-111. Radiation Therapy Services.
VR 355-30-112. Miscellaneous Capital Expenditures.
VR 355-30-113. Nursing Home Services.

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

Effective Date: July 1, 1993.

Summary:

The State Medical Facilities Plan (SMFP) provides criteria and standards for the full range of capital expenditure project categories which require certificate of public need review under the 1992 amendments to the law. This document serves as a basis for decision making on a wide range of project categories including general acute care services, perinatal services, cardiac services, general surgical services, organ transplant services, psychiatric/substance abuse treatment services, mental retardation services, medical rehabilitation services, diagnostic imaging services, lithotripsy services, miscellaneous capital expenditures, and nursing home services.

The statutory amendments which became effective on July 1, 1992, substantially expanded the categories of capital expenditure projects that require COPN approval by the State Health Commissioner prior to initiation. The SMFP serves as a basis for decision making on a wide range of project categories and is essential to the implementation of the COPN program.

The SMFP provides guidance for assessing the public need for the full range of capital expenditure project categories which require COPN review under the 1992 law amendments. Without the SMFP, the Department of Health would have no specific standards in place to review such major medical equipment categories as lithotripsy, positron emission tomography, single photon emission computed tomography (SPECT), gamma knife surgery, or magnetic source imaging. Additionally, the SMFP is the department's only available guidance for the evaluation of service categories subject to COPN review such as medical rehabilitation and organ transplantation, and many other health service categories. Finally, under the 1992 law amendments, any capital expenditure, for whatever reason, which exceeds $1 million, is subject to COPN review. The SMFP establishes specific planning guidance for the review of the many COPN proposals which will fall in this category but do not involve changes in specific clinical health services or major medical equipment specifically subject to COPN review.

The following substantial changes were made to the proposed regulations:

1. VR 355-30-103. Cardiac Services. Part II, Criteria and Standards for Cardiac Catheterization Services, has been modified to require existing cardiac catheterization equipment to have performed at least 1,200 procedures to be considered for expansion and to have been in service for five years to be considered for replacement.

2. VR 355-30-109. Diagnostic Imaging Services. The term "hardware and software" used in Part II,

Criteria and Standards for Computed Tomography (CT); Part III, Criteria and Standards for Magnetic Resonance Imaging (MRI); and Part VI, Criteria and Standards for Single Photon Emission Computed Tomography (SPECT) has been replaced with the term "equipment."

Also in Parts II, III, and VI, standards for replacement of existing equipment have been modified to allow some flexibility in replacing equipment which is not operating at maximum capacity.

3. VR 355-30-110. Lithotripsy Services. Standards for replacement of extracorporeal shock wave lithotripsy (ESWL) equipment have been revised to require the equipment to be in service for at least five years.

4. VR 355-30-111. Radiation Therapy Services. Standards for the expansion of megavoltage radiation therapy services have been modified to require the equipment to have performed at least 9,000 procedures. Standards for replacement of the equipment have been revised to require the equipment to have been in service for at least five years.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: The following regulations relating to 1993 Medicaid Eligibility Requirements 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 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.

Due to the length of VR 460-02-2.2100:1, only the amended page of the regulation and a summary are being published. The full text of the regulation is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, and at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, Room 262, Richmond, Virginia.

Title of Regulations: **VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination (Attachment 2.2-A).**
460-04-2.6108. Related More Liberal Methods of Treating Resources–Transfer of Assets.

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

Effective Date: July 1, 1993.

Summary:

This regulatory action implements three eligibility requirements mandated by Chapters 701, 990, and 994 of the 1993 Acts of Assembly.

1. Term Life Insurance. The Joint Legislative Audit and Review Commission (JLARC) in its report "Medicaid Asset Transfers and Estate Recovery" estimated 10% of individuals who use loopholes in the eligibility requirements to transfer assets at the time of application for nursing homes purchase term life insurance policies. Chapter 990 of the 1993 Acts of Assembly amended the Code of Virginia to require that in determining eligibility, DMAS must regard as uncompensated transfers any resources used to purchase term life insurance policies having benefits payable at death that do not equal or exceed twice the sum of all premiums paid. The law exempts the purchase of term life insurance policies when they fund preneed funerals under § 54.1-2820 of the Code of Virginia. The law further provides that if the benefits of such policies exceed the expenses of the funeral, the excess benefits are subject to recovery by the department. The law applies to policies purchased after April 7, 1993. Presently purchases of term life insurance policies are not regarded as uncompensated transfers.

2. Inter Vivos Trusts. JLARC reported in "Medicaid Asset Transfers and Estate Recovery" that 7.0% of recipients are able to use trusts as a means of passing their assets on to their heirs. Many of the estate planning seminars conducted by elder lawyers recommend "living trusts," devices through which a grantor places his assets in a trust and through the use of exculpatory clauses limits the discretion of the trustee to pay for medical care or to make any of the assets available to the grantor if he applies for Medicaid. Chapter 701 of the 1993 Acts of Assembly amended the Code of Virginia to invalidate certain provisions in trusts which limit the discretion of trustees to expend funds on behalf of the grantor who created the trust if a Medicaid application is made or if the grantor requires medical, hospital or long-term care services. The law directs the trustee to pay the beneficiary of the trust as if no application for Medicaid had been made.

This new law shall not apply to any trust having a corpus of less than $25,000, except that if the grantor has established more than one trust, the corpora of the trusts shall be added together to determine whether the exemption applies. If the corpora of the trusts exceed $25,000, the exemption shall be prorated among the trusts.

Under present law, trustees of such inter vivos trusts are prohibited from paying income or principal of such trusts to the grantor if the grantor applies for Medicaid or needs medical, hospital or long-term care services. These provisions permit individuals to transfer assets and become eligible for Medicaid.

3. Hospice Eligibility. Item 313(O)(1) of the 1993 Appropriation Act (Chapter 994 of the 1993 Acts of Assembly) requires that DMAS amend the State Plan for Medical Assistance to cover the optional categorically needy group of individuals who would be eligible for medical assistance if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election of hospice services under § 1905(o) of the Social Security Act. Under this provision, individuals who are terminally ill and elect hospice services will not have to be determined disabled in order to meet an eligibility category for Medicaid. This will expedite an eligibility determination because disability determinations require 90 days. It was reported that many terminally ill individuals die before eligibility can be established.

VR 460-02-2.2100:1. Groups Covered and Agencies Responsible for Eligibility Determination.

B. Optional groups other than the medically needy (continued).

Citation: 1902(a)(10)(A)(ii)(VII) of the Act

☒ 5. Individuals who would be eligible for Medicaid under the plan if they were in a medical institution, who are terminally ill, and who receive hospice care in accordance with a voluntary election described in § 1905(o) of the Act.

☒ The state covers all individuals as described below.

☐ The state covers only the following group or groups of individuals:

.....Aged

.....Blind

.....Disabled Individuals under the age of–
....21 ....20 ....19 18

.....Caretaker relatives

.....Pregnant women

VR 460-04-2.6108. Related More Liberal Methods of Treating Resources–Transfer of Assets.

§ 1. Transfer of assets.

A. Certain term life insurance policies purchased after April 7, 1993.

When making eligibility determinations for institutional or community-based care to be paid for by the department, the department shall consider as an uncompensated transfer all resources that are used by an applicant to purchase any term life insurance policy that does not have a benefit payable at death that will equal or exceed twice the sum of all premiums paid for such policy if the policy was purchased within 30 months prior to the date of application for medical assistance unless the policy was purchased to fund a funeral in accordance with § 54.1-2820 of the Code of Virginia.

The purpose of the policy shall be determined by reviewing the policy. If the policy language specifies that the death benefits shall be used to purchase burial space items or funeral services then the purchase of such policy shall not be considered a transfer of assets; however, the Department of Medical Assistance Services shall initiate action to recover from the beneficiary the amount of any benefit paid under the provisions of the policy which exceed the actual expense of the funeral and burial of the insured.

B. Inter vivos trusts.

When determining eligibility for medical assistance, the assets of any inter vivos trust, both principal and interest, shall be considered available to the grantor who is an applicant for or recipient of medical assistance without regard to any provision of the trust which provides directly or indirectly for the suspension, termination, or diversion of the principal, income or other beneficial interest of the grantor if he should apply for medical assistance or if he should require medical, hospital or nursing care or long-term custodial, nursing or medical care. The amount of principal or interest to be considered available shall be that amount of income or principal of the trust to which the grantor is entitled if no application for assistance had been made except that up to $25,000 of the corpus of the trust shall not be a countable asset.

If the grantor created more than one such trust, the corpora of the trusts shall be added together. If the sum of the corpora is less than $25,000, no assets from any of the trusts shall be considered available. If the sum of the corpora exceeds $25,000, then the total amount of the corpora less $25,000 is a countable asset. In determining the amount of each trust to exempt, the $25,000 exemption shall be prorated among the trusts.

In applying this section, if the grantor has made uncompensated transfers as defined in § 20-88.02 of the Code of Virginia within 30 months of applying for Medicaid and no payments were ordered pursuant to subsection D of that section, then no $25,000 exemption shall be granted.

* * * * * * * *

Title of Regulation: **State Plan for Medical Assistance Relating to Copayments for Outpatient Rehabilitative Services and Removal of XVIII Cap on Fees. VR 460-02-4.1810. Charges Imposed on Categorically Needy for Certain Services.**
VR 460-02-4.1830. Charges Imposed on Medically Needy

for Certain Services.
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates – Other Types of Care.

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

Effective Date: July 1, 1993.

Summary:

The purpose of this regulatory action is (i) to promulgate permanent regulations which will provide for equitable application of recipient cost sharing policies for outpatient rehabilitative services and the elimination of the Medicare cap on all services' fees; and (ii) to replace emergency regulations currently in effect.

The sections of the Plan which are affected by this action are: Recipient Cost Sharing Obligations (Attachments 4.18 A and C); and Methods and Standards for Establishing Payment Rates – Other Types of Care (Attachment 4.19 B). Recipient cost sharing for outpatient rehabilitative services and the elimination of the Medicare cap on all services' fees are discussed below.

Recipient Cost Sharing for Outpatient Rehabilitative Services

The 1992 Appropriations Act directed the Department of Medical Assistance Services (DMAS) to impose copayments on home health services. These services were intended to mean health services rendered in the home setting regardless of the kind of provider. Home health services include nursing, home health aide, speech and language services, physical therapy, and occupational therapy. The only agencies delivering nursing and home health aide services in the home setting are home health agencies. However, therapy services (speech, physical therapy and occupational) are also offered in the home by rehabilitation agencies. Therefore, it was necessary to place a copayment on the in-home therapy services offered by rehabilitation agencies as well as those offered by home health agencies.

In developing the implementation plans for complying with this Appropriations Act mandate, DMAS identified that while rehabilitation agencies offer therapy services in the homes of recipients, they also offer these in their offices. If Medicaid imposes a copayment on in-home services then there will be an incentive for rehabilitation agencies to shift the location of services from the home to their offices. If this occurs then DMAS will not achieve the savings directed in the Appropriations Act. In order to ensure that the projected savings are achieved, DMAS proposes to impose a copayment on therapy services offered by rehabilitation agencies regardless of whether those services are offered in the home or in the office.

Moreover, an issue of equitable treatment of recipients is created if copayments are not imposed on therapy treatments in the offices of rehabilitation agencies. Individuals who are homebound and unable to leave their homes for treatment and people who go to hospital outpatient departments will be required to pay copayments, while individuals who are able to go to the offices of the rehabilitation agencies will not be required to pay a copayment. In order to resolve this inequity, it is proposed that copayments be imposed on therapy visits rendered by rehabilitation agencies regardless of the place of treatment.

Because the Appropriations Act directed DMAS to impose copayments on home health services effective July 1, 1992, and because it is necessary to apply these copayments equitably to all recipients of outpatient therapy services an emergency regulation was issued. Without the emergency regulation, DMAS could not meet the requirement of the Appropriations Act nor could it apply the copayment equitably until after a public comment period. Since emergency regulations are time limited in their effectiveness, these proposed permanent regulations, once adopted in their final form, will supersede the existing emergency regulation.

This regulation varies from the emergency regulation by the exclusion of emergency services and all services delivered in emergency rooms from the application of the copay policy. Federal regulations exclude the imposition of recipient cost sharing for emergency services and define how such services are to be interpreted (Code of Federal Regulations § 447.53(b)(4)). Moreover, DMAS has determined that nonemergency services, as identified by the Reimbursement Adjustment for Non-Emergency Care in Emergency Rooms programs, provided in emergency rooms should not be subject to recipient copayment. The administrative cost and complexity of providers attempting to collect the copayment from the recipient after the service has been delivered was determined to be an unnecessary, costly burden to providers and, therefore, was excluded from the copayment policy.

Elimination of Medicare Cap on All Services' Fees

Effective January 1, 1992, Medicare implemented a major revision of its fee schedule for physician services. This new fee schedule was not intended to change total Medicare expenditures for physician services but did change amounts paid for many individual services significantly. Many kinds of surgical and diagnostic services are being reimbursed at a lower rate than before, while the services of primary care physicians are being reimbursed at a higher rate.

Although on average, Virginia Medicaid fees are lower than those of Medicare, there are some instances where the new Medicare fees have been reduced so sharply that they are now lower than those of Virginia Medicaid for the same services. For example, Medicare allows a payment of $670 for routine obstetrical care, including antepartum care, vaginal delivery, and postpartum care. The Medicaid allowed payment is $1200 which is still well below payments made by other third party payers. To simply follow the language of the current state plan would mean reducing payment, sometimes significantly, for many physician services.

DMAS has used the payment rates set by the Medicare program for a number of years. It was voluntary on DMAS' part and not related to any federal policy or law. After further study and experience with the current emergency regulation, DMAS determined that removing the Medicare cap on all services was appropriate and consequently has reflected this policy in this proposed regulation.

Also, the numbering scheme of Attachment 4.19 B is being revised. This is a technical change and has no policy or fiscal impact.

VR 460-02-4.1810. Charges Imposed on Categorically Needy for Certain Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: VIRGINIA

A. The following charges are imposed on the categorically needy and qualified Medicare beneficiaries for services other than those provided under 42 CFR § 447.53.

Service	Type Charge Deduct	Coins	Copay	Amount and Basis for Determination
Inpatient Hospital	$100	-0-	-0-	State's average daily payment of $594 is used as basis.
Outpatient Hospital Clinic	-0-	-0-	$3.00	State's average payment of $136 is used as basis.
Clinic Visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Physician Office Visit	-0-	-0-	$1.00	State's average payment of $23 is used as basis.
Eye examination	-0-	-0-	$1.00	State's average payment of $30 is used as basis.
Prescriptions	-0-	-0-	$1.00	State's average per script of $18 is used as payment basis.
Home Health Visit	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Other Physician Service	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Rehab Therapy Services (PT, OT, Sp/Lang.)	*-0-*	*-0-*	*$3.00*	*State's average payment of $78 is used as basis.*

**Note: The applicability of copays to emergency services is discussed further in this attachment.*

B. The method used to collect cost sharing charges for categorically needy individuals:

☒ Providers are responsible for collecting the cost sharing charges from individuals.

☐ The agency reimburses providers the full Medicaid rate for a services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he ~~/she~~ is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described below:

The application and exclusion of cost sharing is administered through the program's MMIS. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; prohibition of service denial if recipient is unable to meet cost-sharing charges.

E. Cumulative maximums on charges:

☒ State policy does not provide for cumulative maximums.

☐ Cumulative maximums have been established as described below:

F. Emergency services.

No recipient copayment shall be collected for the following services:

1. Services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition

manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

a. Placing the patient's health in serious jeopardy;

b. Serious impairment to bodily functions; or

c. Serious dysfunction of any bodily organ or part; and

2. All services delivered in emergency rooms.

VR 460-02-4.1830. Charges Imposed on Medically Needy for Certain Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State: VIRGINIA

A. The following charges are imposed on the medically needy *and qualified Medicare beneficiaries* for services *other than those provided under 42 CFR § 447.53* :

Service	Type Charge Deduct	Coins	Copay	Amount and Basis for Determination
Inpatient hospital	$100.00	-0-	-0-	State's average daily payment of $594 is used as basis.
Out-patient hospital clinic	-0-	-0-	$3.00	State's average payment of $136 is used as basis.
Clinic visit	-0-	-0-	$1.00	State's average payment of $29 is used as basis.
Physician office visit	-0-	-0-	$1.00	State's average payment of $23 is used as basis.
Eye examination	-0-	-0-	$1.00	State's payment of $30.00 is used as basis.
Prescriptions	-0-	-0-	$1.00	State's average per script of $18 is used as basis.
Home Health Visit	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Other Physician Service	-0-	-0-	$3.00	State's average payment of $56 is used as basis.
Rehab Therapy Services (PT, OT, Sp/Lang.	*-0-*	*-0-*	*$3.00*	*State's average payment of $78 is used as basis.*

**Note: The applicability of copays to emergency services is discussed further in this attachment.*

B. The method used to collect cost sharing charges for medically needy individuals:

☒ Providers are responsible for collecting the cost sharing charges from individuals.

☐ The agency reimburses providers the full Medicaid rate for services and collects the cost sharing charges from individuals.

C. The basis for determining whether an individual is unable to pay the charge, and the means by which such an individual is identified to providers, is described below:

Providers will, based on information available to them, make a determination of the recipient's ability to pay the copayment. In the absence of knowledge or indications to the contrary, providers may accept the recipient's assertion that he ~~/she~~ is unable to pay the required copayment.

Recipients have been notified that inability to meet a copayment at a particular time does not relieve them of that responsibility.

D. The procedures for implementing and enforcing the exclusions from cost sharing contained in 42 CFR 447.53(b) are described below:

The application and exclusion of cost sharing is administered through the Program's MMIS. Documentation of the certified computer system delineates, for each type of provider invoice used, protected eligible groups, protected services and applicable eligible groups and services.

Providers have been informed about: copay exclusions; applicable services and amounts; prohibition of service denial if recipient is unable to meet cost sharing changes.

E. Cumulative maximums on charges:

☒ State policy does not provide for cumulative maximums.

☐ Cumulative maximums have been established as described below:

F. Emergency services.

No recipient copayment shall be collected for the following services.

1. Services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

a. Placing the patient's health in serious jeopardy;

b. Serious impairment to bodily functions; or

c. Serious dysfunction of any bodily organ or part; and

2. All services delivered in emergency rooms.

VR 460-02-4.1920. Methods and Standards Used for

Establishing Payment Rates–Other Types of Care.

§ 1. General.

The policy and the method to be used in establishing payment rates for each type of care or service (other than inpatient hospitalization, skilled nursing and intermediate care facilities) listed in § 1905(a) of the Social Security Act and included in this State Plan for Medical Assistance are described in the following paragraphs:

~~a.~~ *1.* Reimbursement and payment criteria will be established which are designed to enlist participation of a sufficient number of providers of services in the program so that eligible persons can receive the medical care and services included in the Plan at least to the extent these are available to the general population.

~~b.~~ *2.* Participation in the program will be limited to providers of services who accept, as payment in full, the state's payment plus any copayment required under the State Plan.

~~c.~~ *3.* Payment for care or service will not exceed the amounts indicated to be reimbursed in accord with the policy and methods described in this Plan and payments will not be made in excess of the upper limits described in 42 CFR 447.304(a). The state agency has continuing access to data identifying the maximum charges allowed: such data will be made available to the Secretary, HHS, upon request.

~~d.~~ *§ 2. Services which are reimbursed on a cost basis.*

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals

2. Outpatient hospital services excluding laboratory

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency room and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and

reimburse for nonemergency care rendered in emergency rooms at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (2) above. Services not meeting certain criteria shall be paid under the methodology of (1) above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

3. Rural health clinic services provided by rural health clinics or other federally qualified health centers defined as eligible to receive grants under the Public Health Services Act §§ 329, 330, and 340.

4. Rehabilitation agencies

5. Comprehensive outpatient rehabilitation facilities

6. Rehabilitation hospital outpatient services.

~~e.~~ *§ 3.* Fee-for-service providers.

~~(1)~~ *A.* Payment for the following services shall be the ~~lowest~~ *lower* of ~~:~~ *the* state agency fee schedule ~~;~~ *or* actual charge (charge to the general public) ~~; or Medicare (Title XVIII) allowances~~ :

~~(a)~~ *1.* Physicians' services (Supplement 1 has obstetric/pediatric fees.) The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse physicians for nonemergency care rendered in emergency rooms at a reduced rate.

~~(i)~~ *(1)* DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in Supplement 1 to Attachment 4.19 B, rendered in emergency rooms which DMAS determines are nonemergency care.

~~(ii)~~ *(2)* Services determined by the attending

physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

~~(iii)~~ *(3)* Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for ~~(ii)~~ *(2)* above. Services not meeting certain criteria shall be paid under the methodology of ~~(i)~~ *(1)* above. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

~~(iv)~~ *(4)* Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

~~(v)~~ *(5)* DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

~~(b)~~ *2.* Dentists' services

~~(c)~~ *3.* Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

~~(d)~~ *4.* Podiatry

~~(e)~~ *5.* Nurse-midwife services

~~(f)~~ *6.* Durable medical equipment

~~(g)~~ *7.* Local health services

~~(h)~~ *8.* Laboratory services (Other than inpatient hospital)

~~(i)~~ *9.* Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

~~(j)~~ *10.* X-Ray services

~~(k)~~ *11.* Optometry services

~~(l)~~ *12.* Medical supplies and equipment.

~~(m)~~ *13.* Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by Supplement 3.

~~(2)~~ *B.* Hospice services payments must be no lower than the amounts using the same methodology used under part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

~~f.~~ *C.* Payment for pharmacy services shall be the lowest of items ~~(1)~~ *1* through ~~(5)~~ *5* (except that items ~~(1)~~ *1* and ~~(2)~~ *2* will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the HCFA upper limit of VMAC cost) subject to the conditions, where applicable, set forth in items ~~(6)~~ *6* and ~~(7)~~ *7* below:

~~(1)~~ *1.* The upper limit established by the Health Care Financing Administration (HCFA) for multiple source drugs pursuant to 42 CFR §§ 447.331 and 447.332, as determined by the HCFA Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

~~(2)~~ *2.* The Virginia Maximum Allowable Cost (VMAC) established by the agency plus a dispensing fee, if a legend drug, for multiple source drugs listed on the VVF.

~~(3)~~ *3.* The Estimated Acquisition Cost (EAC) which shall be based on the published Average Wholesale Price (AWP) minus a percent discount established by the methodology set out in ~~(a)~~ *a* through ~~(c)~~ *c* below. (Pursuant to OBRA 90 § 4401, from January 1, 1991, through December 31, 1994, no changes in reimbursement limits or dispensing fees shall be made

which reduce such limits or fees for covered outpatient drugs).

~~(a)~~ *a.* Percent discount shall be determined by a statewide survey of providers' acquisition cost.

~~(b)~~ *b.* The survey shall reflect statistical analysis of actual provider purchase invoices.

~~(c)~~ *c.* The agency will conduct surveys at intervals deemed necessary by DMAS, but no less frequently than triennially.

~~(4)~~ *4.* A mark-up allowance (150%) of the Estimated Acquisition Cost (EAC) for covered nonlegend drugs and oral contraceptives.

~~(5)~~ *5.* The provider's usual and customary charge to the public, as identified by the claim charge.

~~(6)~~ *6.* Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. However, oral contraceptives shall not be subject to the one month dispensing rule. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements.

~~(7)~~ *7.* The Program recognizes the unit dose delivery system of dispensing drugs only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose add-on fee and an allowance for the cost of unit dose packaging established by the state agency. The maximum allowed drug cost for specific multiple source drugs will be the lesser of: either the VMAC based on the 60th percentile cost level identified by the state agency or HCFA's upper limits. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency.

~~(8)~~ *8.* ~~Historical determination of EAC.~~ Determination of EAC was the result of an analysis of FY'89 paid claims data of ingredient cost used to develop a matrix of cost using 0 to 10% reductions from AWP as well as discussions with pharmacy providers. As a result of this analysis, AWP minus 9.0% was determined to represent prices currently paid by providers effective October 1, 1990.

The same methodology used to determine AWP minus 9.0% was utilized to determine a dispensing fee of $4.40 per prescription as of October 1, 1990. A periodic review of dispensing fee using Employment Cost Index - wages and salaries, professional and technical workers will be done with changes made in dispensing fee when appropriate. As of October 1, 1990, the Estimated Acquisition Cost will be AWP minus 9.0% and dispensing fee will be $4.40.

~~g.~~ *D.* All reasonable measures will be taken to ascertain the legal liability of third parties to pay for authorized care and services provided to eligible recipients including those measures specified under 42 USC 1396(a)(25).

~~h.~~ *E.* The single state agency will take whatever measures are necessary to assure appropriate audit of records whenever reimbursement is based on costs of providing care and services, or on a fee-for-service plus cost of materials.

~~i.~~ *F.* Payment for transportation services shall be according to the following table:

TYPE OF SERVICE	PAYMENT METHODOLOGY
Taxi services	Rate set by the single state agency
Wheelchair van	Rate set by the single state agency
Nonemergency ambulance	Rate set by the single state agency
Emergency ambulance	Rate set by the single state agency
Volunteer drivers	Rate set by the single state agency
Air ambulance	Rate set by the single state agency
Mass transit	Rate charged to the public
Transportation agreements	Rate set by the single state agency
Special Emergency transportation	Rate set by the single state agency

~~j.~~ *G.* Payments for Medicare coinsurance and deductibles for noninstitutional services shall not exceed the allowed charges determined by Medicare in accordance with 42 CFR 447.304(b) less the portion paid by Medicare, other third party payors, and recipient copayment requirements of this Plan. See Supplement 2 of this methodology.

~~k.~~ *H.* Payment for eyeglasses shall be the actual cost of the frames and lenses not to exceed limits set by the single state agency, plus a dispensing fee not to exceed limits set by the single state agency.

~~l.~~ *I.* Expanded prenatal care services to include patient education, homemaker, and nutritional services shall be reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

~~m.~~ *J.* Targeted case management for high-risk pregnant women and infants up to age two and for community mental health and mental retardation services shall be

reimbursed at the lowest of: state agency fee schedule, actual charge, or Medicare (Title XVIII) allowances.

~~n.~~ *§ 4.* Reimbursement for all other nonenrolled institutional and noninstitutional providers.

~~(1)~~ *A.* All other nonenrolled providers shall be reimbursed the lesser of the charges submitted, the DMAS cost to charge ratio, or the Medicare limits for the services provided.

~~(2)~~ *B.* Outpatient hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which submit claims shall be paid based on the DMAS average reimbursable outpatient cost-to-charge ratio, updated annually, for enrolled outpatient hospitals less 5.0%. The 5.0% is for the cost of the additional manual processing of the claims. Outpatient hospitals that are nonenrolled shall submit claims on DMAS invoices.

~~(3)~~ *C.* Nonenrolled providers of noninstitutional services shall be paid on the same basis as enrolled in-state providers of noninstitutional services. Nonenrolled providers of physician, dental, podiatry, optometry, and clinical psychology services, etc., shall be reimbursed the lesser of the charges submitted, or the DMAS rates for the services.

~~(4)~~ *D.* All nonenrolled noninstitutional providers shall be reviewed every two years for the number of Medicaid recipients they have served. Those providers who have had no claims submitted in the past 12 months shall be declared inactive.

~~(5)~~ *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.

~~o.~~ *§ 5.* Refund of overpayments.

~~(1)~~ *A.* Providers reimbursed on the basis of a fee plus cost of materials.

~~(a)~~ *1.* When DMAS determines an overpayment has been made to a provider, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

~~(b)~~ *2.* If the provider cannot refund the total amount of the overpayment within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

3. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

4. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

5. If, during the time an extended repayment schedule is in effect, the provider withdraws from the Program, the outstanding balance shall become immediately due and payable.

6. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

~~(c)~~ *7.* In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

~~(d)~~ *8.* Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

9. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

10. The director's determination shall be deemed to be final on (i) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (ii) the issue date fact finding conference, if the provider does not file an appeal, or (iii) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

B. Providers reimbursed on the basis of reasonable costs.

1. When the provider files a cost report indicating that an overpayment has occurred, full refund shall be remitted with the cost report. In cases where DMAS discovers an overpayment during desk review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputed in whole or in part DMAS's determination of the overpayment.

2. If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So long as the provider has an overpayment balance, an underpayment discovered by subsequent review or audit shall also be used to reduce the remaining amount of the overpayment.

3. If the provider cannot refund the total amount of the overpayment (i) at the time it files a cost report indicating that an overpayment has occurred, the provider shall request an extended repayment schedule at the time of filing, or (ii) within 30 days after receiving the DMAS demand letter, the provider shall promptly request an extended repayment schedule.

4. DMAS may establish a repayment schedule of up to 12 months to recover all or part of an overpayment, or, if a provider demonstrates that repayment within a 12-month period would create severe financial hardship, the Director of the Department of Medical Assistance Services (the "director") may approve a repayment schedule of up to 36 months.

5. A provider shall have no more than one extended repayment schedule in place at one time. If an audit later uncovers an additional overpayment, the full amount shall be repaid within 30 days unless the provider submits further documentation supporting a modification to the existing extended repayment schedule to include the additional amount.

6. If during the time an extended repayment schedule is in effect, the provider withdraws from the program or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

7. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered by the reduction of interim payments to the provider or by lump sum payments.

8. In the request for an extended repayment schedule, the provider shall document the need for an extended (beyond 30 days) repayment and submit a written proposal scheduling the dates and amounts of repayments. If DMAS approves the schedule, DMAS shall send the provider written notification of the approved repayment schedule, which shall be effective retroactive to the date the provider submitted the proposal.

9. Once an initial determination of overpayment has been made, DMAS shall undertake full recovery of such overpayment whether or not the provider disputes, in whole or in part, the initial determination of overpayment. If an appeal follows, interest shall be waived during the period of administrative appeal of an initial determination of overpayment.

10. Interest charges on the unpaid balance of any overpayment shall accrue pursuant to § 32.1-313 of the Code of Virginia from the date the director's determination becomes final.

11. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

§ 6. Reserved.

~~p.~~ *§ 7.* Dispute resolution for state-operated providers

~~(1)~~ *A.* Definitions.

~~(a)~~"DMAS" means the Department of Medical Assistance Services.

~~(b)~~"Division director" means the director of a division of DMAS.

~~(c)~~"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

~~(2)~~ *B.* Right to request reconsideration.

~~(a)~~ A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan

by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

~~(b)~~ The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

~~(3)~~ *C.* Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

~~(4)~~ *D.* Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

~~(5)~~ *E.* DMAS director review.

A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

~~(6)~~ *F.* Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after the receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other Cabinet Secretary as appropriate. Any determination by such Secretary or Secretaries shall be final.

* * * * * * * *

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 the Medicaid Prior Authorization Advisory Committee and Blood Glucose Meters for Pregnant Women.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-03-3.1103. Requirements and Limits Applicable to Specific Services: Expanded Prenatal Care Services.

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

Effective Date: July 1, 1993.

Summary:

The amendments to the regulation (i) create the Medicaid Prior Authorization Advisory Committee, and (ii) expand coverage of blood glucose meters for pregnant women due to action taken by the 1993 session of the General Assembly in the Appropriation Act.

The current State Plan for Medical Assistance does not contain provisions for the establishment of a Medicaid Prior Authorization Advisory Committee. The 1993 Virginia Acts of Assembly directs the board to amend the State Plan and to promulgate regulations creating the committee.

Specifically, the new law requires that (i) the board appoint a 10-member committee of health care professionals; (ii) the committee make recommendations to the board regarding drugs or categories of drugs subject to prior authorization; (iii) members of the committee, the board and the staff of DMAS be immune, individually and jointly, from civil liability in performance of these duties; and (iv) the committee report annually to the Joint Commission on Health Care regarding recommendations for prior authorization of drug products.

Increases in expenditures, based on the Legislative Impact Study, are estimated to total $3,623 for fiscal years 1993 through 1995 ($1,136.50 GF, $2,486.50 NGF). These increases will result primarily from increases in travel and postage expenses.

Currently, the State Plan for Medical Assistance does not allow for the coverage of blood glucose meters to be used on an outpatient basis. DMAS proposes to provide Medicaid coverage for blood glucose meters for pregnant women in order to minimize the harmful effects of poor blood glucose control during pregnancy for both the mother and fetus.

The importance of monitoring blood glucose levels during pregnancy is especially great for women who are eligible for coverage under Medicaid since low-income women are far more likely to suffer from gestational diabetes than other women. Gestational diabetes is defined as glucose intolerance that is first

recognized during pregnancy. Women with gestational diabetes have normal carbohydrate tolerance before gestation and their tolerance generally returns to normal after delivery. Low-income women experience a higher incidence of gestational diabetes due largely to inappropriate dietary habits as well as an increased likelihood that they suffer from other health problems.

According to a 1989 survey of the Maternal and Infant Care Coordination population in local health departments, it is estimated that 20% of low-income pregnant women in the Commonwealth are afflicted with gestational diabetes.

Current DMAS policy provides coverage for blood glucose monitoring performed only on an inpatient hospital basis. Coverage of blood glucose meters would allow pregnant women to closely and reliably monitor their blood glucose levels in the their own homes.

DMAS estimates that during FY 94 between 38,000 and 39,000 deliveries will occur for women who are eligible to receive Medicaid. Estimates of those who will suffer from gestational diabetes range from 3,500 to 7,000, with less than 1,000 requiring insulin.

This program change complies with Chapter 994 of the 1993 Virginia Acts of Assembly, Item 313 0 2. The annual savings created by eliminating inpatient care for recipients who could avoid hospitalization through early detection of gestational diabetes would offset the costs of acquiring and using the blood glucose meters. In order to be effective, blood glucose monitoring must be paired with nutritional counseling.

The providing of blood glucose meters and the additional nutritional counseling will be administered through the BABYCARE program. The costs of the services includes the cost of providing meters as well as the cost of increased nutritional counseling. These costs are offset by the savings created from avoiding inpatient monitoring. Some patients will still require inpatient care and DMAS cannot at this time predict the exact level of avoidance. DMAS expects the net difference in expenditures to be close to zero.

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

General.

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

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

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

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

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

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

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

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

will be denied.

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

G. Repealed.

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

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

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

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

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

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

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

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

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

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

~~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

~~c.~~ *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.

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.

~~1.~~ Diagnostic examination and optometric treatment procedures and services by ophthamologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

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.

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

1. Home health aides must function under the

supervision of a professional nurse.

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

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

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

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

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

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

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

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

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

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

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

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

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

h. Home or vehicle modifications.

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

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

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

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

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

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. 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, 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.

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.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

~~1.~~ *B.* The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

~~2.~~ *C.* Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

~~3. Repealed.~~

~~4.~~ *D.* Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

~~5.~~ *E.* New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

~~6.~~ *F.* The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

b. In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

c. In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

4. Prior authorization of prescription drug products, coverage.

a. The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

b. Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

c. In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this

action on pharmacy, physician, hospitalization and outpatient costs.

d. The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

e. Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

5. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

6. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, 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 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 least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides

may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanitoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens ~~(17.c)~~

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services

are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-03-3.1103. Requirements and Limits Applicable to Specific Services: Expanded Prenatal Care Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: All
COVERED GROUPS: All
Expanded Prenatal Care Services (Reference 20.c)

Provide coverage and reimbursement of additional prenatal care services.

A. Comparability of services.

Services are not comparable in amount, duration and scope. Authority of § 9501(b) of COBRA 1985 allows an exception to provide service to pregnant women without regard to the requirements of § 1902(a)(10)(B).

B. Definition of services.

Expanded prenatal care services will offer a more comprehensive prenatal care services package to improve pregnancy outcome. The expanded prenatal care services provider may perform the following services:

1. Patient education. Includes six classes of education for pregnant women in a planned, organized teaching environment including but not limited to topics such as body changes, danger signals, substance abuse, labor and delivery information, and courses such as planned parenthood, Lamaze, smoking cessation, and child rearing.

Instruction must be rendered by Medicaid certified providers who have appropriate education, license, or certification.

2. Homemaker. Includes those services necessary to maintain household routine for pregnant women, primarily in third trimester, who need bed rest. Services include, but are not limited to, light housekeeping, child care, laundry, shopping, and meal preparation.

Must be rendered by Medicaid certified providers.

3. Nutrition. Includes nutritional assessment of dietary habits, and nutritional counseling and counseling follow-up. All pregnant women are expected to receive basic nutrition information from their medical care providers or the WIC Program.

Must be provided by a Registered Dietitian (R.D.) or a person with a master's degree in nutrition, maternal and child health, or clinical dietetics with experience in public health, maternal and child nutrition, or clinical dietetics.

4. Blood glucose meters. Effective on and after July 1 1993, blood glucose test products shall be providea when they are determined by the physician to be medically necessary for pregnant women suffering from a condition of diabetes which is likely to negatively affect their pregnancy outcomes. The women authorized to receive a blood glucose meter must also be referred for nutritional counseling. Such products shall be provided by Medicaid enrolled durable medical equipment providers.

C. Qualified providers.

Any duly enrolled provider which the department determines to be qualified who has signed an agreement may provide expanded prenatal care services. The qualified providers will provide prenatal care services regardless of their capacity to provide any other services under the plan.

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REGISTRAR'S NOTICE: The amendments to this regulation 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 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: **VR 460-03-1940:1. Nursing Home**

Payment System: Indirect Patient Care Ceiling.

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

Effective Date: July 1, 1993.

Summary:

This action will amend the Plan for Medical Assistance to implement the 1993 General Assembly mandate concerning indirect patient care ceilings.

The section of the State Plan for Medical Assistance which is affected by this action is the Nursing Home Payment System (Supplement to Attachment 4.19 D).

The 1993 General Assembly, in the Appropriations Act (Item 313.Q), directed the Board of Medical Assistance Services to adopt revised regulations, effective July 1, 1993, governing the reimbursement methodology used to establish per diem rates for nursing facilities. The revised methodology is to establish the indirect patient care ceilings at 103% of the median cost per day determined as of October 1, 1990.

DMAS' current reimbursement methodology (the Patient Intensity Rating System or PIRS), was adopted effective October 1, 1990. In order to establish the peer group ceilings under PIRS, DMAS rebased the nursing facility (NF) peer groups and determined the peer group's medians of cost based on cost reports submitted during 1989 and appropriately inflated to September 30, 1990. During 1989, due to cost management efficiencies previously achieved by the provider community, approximately 58% of the NFs had operating cost per diems which were below their 1989 peer group ceilings (cost medians) as originally determined during 1982 and subsequently inflated. Both DMAS and the provider community recognized that establishing new peer group medians based upon 1989 costs would result in peer group ceilings for the new PIRS reimbursement methodology which would be substantially below the existing peer group ceilings for the reimbursement methodology in effect through September 30, 1990. To preclude that permissible but unintended consequence of a change in reimbursement methodology, a "budget neutral" adjustment of $7.1 million for state fiscal year 1991 was added to the PIRS peer group medians, which increased the direct patient care ceilings to 106.31% of the medians and the indirect patient care ceilings to 105% of the medians. These became the final peer group ceilings for a NF's first full or partial year under the PIRS methodology.

With this "budget neutral" adjustment of $7.1 million to the PIRS medians, the NFs were allowed upon implementation of PIRS in 1990 to both retain the cost management efficiencies achieved prior to and during 1990 and to receive efficiency incentive payments in 1991 of approximately $4.5 million as provided by § 2.7.F of the regulation.

By this 1993 General Assembly-mandated action, the Commonwealth will share in these NF cost management efficiencies.

DMAS estimates that reducing the indirect ceiling from 105% to 103% of the medians determined as of October 1, 1990, will result in a reduction of budgeted general funds of approximately $1 million ($2 million in total funds) for fiscal year 1994. The 1994 Appropriation Act (Item 313) was reduced to account for these savings.

VR 460-03-4.1940:1. Nursing Home Payment System (PIRS).

PART I.
INTRODUCTION.

§ 1.1. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, as are mental retardation facilities. All other sections of this payment system relating to

reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supercede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II.
RATE DETERMINATION PROCEDURES.

Article 1.
Plant Cost Component.

§ 2.1. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.10.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued.

§ 2.3. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing $100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's

reporting period).

B. Providers (including related organizations as defined in § 2.10) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see § 2.10.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with § 2.2 B.

§ 2.4. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under § 2.1 B, 2.1 C, and 2.14 A.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with §§ 2.4 A 1 through 2.4 A 4 for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

B. Interest rate upper limit.

Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal

Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in §§ 2.4 B 1 and 2.4 B 2 shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of commitment for construction financing or date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the providers interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in § 2.4 B 1, 2, and 3 shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

a. Examination Fees

b. Guarantee Fees

c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)

d. Underwriters Discounts

e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

a. Legal Fees

b. Cost Certification Fees

c. Title and Recording Costs

d. Printing and Engraving Costs

e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

§ 2.5. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of § 2.10, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See § 2.10 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.

2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any

amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

a. That a sale or transfer is about to be made;

b. The location and general description of the property to be sold or transferred;

c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and

d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.
Operating Cost Component.

§ 2.6. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

§ 2.7. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. In accordance with § 1.3, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in VR 460-03-1491. Indirect patient care operating cost peer groups shall be established for the

Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in VR 460-03-4.1941 as direct patient care operating costs and NATCEPs costs.

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See VR 460-03-4.1944 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SIIs.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See VR 460-03-4.1944 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

6. Effective July 1, 1993, the indirect patient care ceilings shall be established as follows: 103% of the median cost per day determined as of October 1, 1990, shall be adjusted for inflation to July 1, 1993, in accordance with subsection B of this section. The methodology described in subsections B and C of this section shall continue to be used in determining rates on and after July 1, 1993.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2.7 A shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after

September 30, 1990, calculated in both §§ 2.7 A 5 a and 2.7 A 5 c. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

1. Allowable plant costs shall be reimbursed in accordance with Part II, Article 1. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII.

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day		Difference % of Ceiling	Sliding Scale	Scale % Difference
$30.00	$27.00	$3.00	10%	$ .30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0		0	

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement.

A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility.

In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice.

To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2.8. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by § 2.7 above and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by § 2.7 above and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in § 2.7 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See VR 460-03-4.1944 for example calculations.

§ 2.8. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.
Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. Operating costs.

1. Direct patient care operating costs shall be defined in VR 460-03-4.1941.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920).

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill.

Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

§ 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR 460-03-4.1943, Cost Reimbursement Limitations.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a

separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

§ 2.11. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR 460-03-4.1943, Cost Reimbursement Limitations).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40 hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transaction or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

§ 2.13. Rent/Leases.

Rent or lease expenses shall be limited by the provisions of VR 460-03-4.1942, Leasing of Facilities.

§ 2.14. Provider payments.

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. An interim settlement shall be made by DMAS within 90 days after receipt and review of the cost report. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;

2. Insolvency of the provider at the time the cost report is submitted;

3. Lack of a valid provider agreement and decertification;

4. Moneys owed to DMAS;

5. Errors or inconsistencies in the cost report; or

6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in VR 460-03-4.1943, Cost Reimbursement Limitations.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4.
New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the

DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

F. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment, shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2.19. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2.7 F.)

Article 5.
Cost Reports.

§ 2.20. Cost report submission.

A. 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, it is considered delinquent. The cost report shall be deemed complete when DMAS has received all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);

2. The provider's trial balance showing adjusting journal entries;

3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows. Multi-facility providers not having individual facility financial statements shall submit the "G" series schedules from the cost report plus a statement of changes in cash flow and corporate consolidated financial statements;

4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

§ 2.21. Reporting form.

All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

§ 2.22. Accounting method.

The accrual method of accounting and cost reporting is mandated for all providers.

§ 2.23. Cost report extensions.

A. Extension for submission of a cost report may be

granted if the provider can document extraordinary circumstances beyond its control.

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;

2. Financial statements not completed;

3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6.
Prospective Rates.

§ 2.25. Time frames.

A. A prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See § 2.20 A.) Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7.
Retrospective rates.

§ 2.26. The retrospective method of reimbursement shall be used for Mental Health/Mental Retardation facilities.

§ 2.27. (reserved)

Article 8.
Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in § 2.29.

§ 2.29. Types of records to be maintained.

Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;

2. Itemized depreciation schedules;

3. Mortgage documents, loan agreements, and amortization schedules;

4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

§ 2.30. Record availability.

The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

§ 2.31. Audit overview.

Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.

2. For the first cost report in which costs for bed additions or other expansions are included.

3. When a NF is sold, purchased, or leased.

4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. Audit delay.

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.20 B.

§ 2.37. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART III.
APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.

2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.

3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.

4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

5. The establishment of separate ceilings for direct operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

a. Determination of resource indexes for each patient class that measures relative resource cost.

b. Determination of each NF's average relative resource cost index across all patients.

c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

A. An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.

2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.

3. All first level appeal requests shall be filed in writing with the DMAS within 90 days following the receipt of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 30 days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 days of receipt of the initial decision.

D. Within 30 days of the receipt of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 45 days of receipt of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons;

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

The appropriate DMAS division must receive the reconsideration request within 30 calendar days after the provider receives its Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought, the amount of the adjustment sought, and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review.

A state-operated provider may, within 30 days after receiving the informal review decision of the division director, request that the DMAS director or his designee review the decision of the division director. The DMAS director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 days after receipt of the decision of the DMAS director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV.
INDIVIDUAL EXPENSE LIMITATION.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in VR 460-03-4.1943, Cost Reimbursement Limitations.

PART V.
COST REPORT PREPARATION INSTRUCTIONS.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART VI.
STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

§ 6.2. Merger of unrelated parties.

A. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

§ 6.3. Merger of related parties.

The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART VII.
NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM AND COMPETENCY EVALUATION PROGRAMS (NATCEPs).

§ 7.1. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security

Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

§ 7.2. NATCEPs costs.

A. NATCEPs costs shall be as defined in VR 460-03-4.1941.

B. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. The NATCEPs interim reimbursement rate determined in § 7.2 B shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in § 7.2 B times the Medicaid patient days from the DMAS MMR-240.

E. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in § 2.14 A.

PART VIII.
(Reserved)

PART IX.
USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X.
COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI.
PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.
START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

§ 12.2. Applicability.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's

facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

§ 12.3. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART XIII.
DMAS AUTHORIZATION.

§ 13.1 Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in § 2.10 who provide assets and other goods and services to the provider.

PART XIV.
HOME OFFICE COSTS.

§ 14.1. General.

Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

§ 14.2. Purchases.

Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

§ 14.3. Allocation of home office costs.

Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

§ 14.4. Nonrelated management services.

Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

§ 14.5. Allowable and nonallowable home office costs.

Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or

portions thereof on or after July 1, 1987.

PART XV.
REFUND OF OVERPAYMENTS.

§ 15.1. 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 audit, 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' determination of the overpayment.

§ 15.2. 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 be used to reduce the balance of the overpayment.

§ 15.3. Payment schedule.

A. 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 in writing 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 in writing an extended repayment schedule.

B. 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 DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify 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 amounts.

D. If, during the time an extended repayment schedule is in effect, the provider ceases to be a participating provider or fails to file a cost report in a timely manner, the outstanding balance shall become immediately due and payable.

E. When a repayment schedule is used to recover only part of an overpayment, the remaining amount shall be recovered from interim payments to the provider or by lump sum payments.

§ 15.4. Extension request documentation.

In the written 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.

§ 15.5. Interest charge on extended repayment.

A. 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.

B. 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.

C. The director's determination shall be deemed to be final on (i) the due date of any cost report filed by the provider indicating that an overpayment has occurred, or (ii) the issue date of any notice of overpayment, issued by DMAS, if the provider does not file an appeal, or (iii) the issue date of any administrative decision issued by DMAS after an informal fact finding conference, if the provider does not file an appeal, or (iv) the issue date of any administrative decision signed by the director, regardless of whether a judicial appeal follows. In any event, interest shall be waived if the overpayment is completely liquidated within 30 days of the date of the final determination. In cases in which a determination of overpayment has been judicially reversed, the provider shall be reimbursed that portion of the payment to which it is entitled, plus any applicable interest which the provider paid to DMAS.

PART XVI.
REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;

2. Appraised replacement cost value; or

3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

* * *

NOTICE: The forms used in administering the above regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the 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, 2nd Floor, Room 262, Richmond, Virginia.

Nursing Facility Uniform Cost Report Under Title XIX - Facility Description and Statistical Data (Schedule A)
Certification by Officer or Administrator of Provider (Schedule A-2)
Reclassification and Adjustment of Trial Balance of Expenses (Schedule B)
Classifications (Schedule B-1)
Analysis of Administrative and General - Other (Schedule B-2)
Adjustment to Expenses (Schedule B-4)
Cost Allocation - Employee Benefits (Schedule B-5)
Computation of Title XIX Direct Patient Care Ancillary Service Costs (Schedule C)
Statement of Cost of Services and Related Organizations (Schedule D)
Statement of Compensation of Owners (Schedule E)
Part II Statement of Compensation Administrators and/or Assistant Administrators (Schedule F)
Balance Sheet (Schedule G)
Statement of Patient Revenues (Schedule G-1)
Statement of Operations (Schedule G-2)
Computation of Title XIX (Medicaid) Base Costs and Prospective Rate/PIRS (Schedule H)
Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates (Schedule H-1)
Calculation of Medical Service Reimbursement Settlement (Schedule J)
Calculation of NATCEPs Reimbursement Settlement (Schedule J-1)
Debt and Interest Expenses (Schedule K)
Limitation on Federal Participation for Capital Expenditures Questionnaire (Schedule L)
Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs) (Schedule N)
Certification by Officer or Administrator of Provider (Schedule A-1)
Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Statistical Data (Worksheet S-3)
Reclassification and Adjustment of Trial Balance of Expenses (Worksheet A)
Reclassification (Worksheet A-6)
Adjustments to Expenses (Worksheet A-8)
Statement of Costs of Services from Related Organizations (Supplemental Worksheet A-8)
Cost Allocation - General Service Costs (Worksheet B, Part I)
Cost Allocation - Statistical Basis (Worksheet B-1)
Allocation of Capital-Related Costs (Worksheet B, Part II)
Departmental Cost Distribution (Worksheet C)
Computation of Patient Intensity Reimbursement System Base Operating Costs (Schedule A-3)
Computation of Direct Patient Care Nursing Service Costs (Schedule A-4)

* * * * * * * *

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical erros, and § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive,

consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 460-04-8.14. Managed Care: "MEDALLION" Regulations.**

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

Effective Date: July 1, 1993.

Summary:

The amendments result from action taken by the 1993 General Assembly and make several technical corrections.

Current DMAS policy provides for payment of a $2.00 per member per month (pmpm) case management fee to all MEDALLION primary care providers (PCPs). In addition, current policy provides for the opportunity for each PCP to receive an additional $2.00 pmpm incentive fee if their utilization is below that of a comparison group.

This regulatory action will eliminate the $2.00 pmpm incentive fee, and increase the management fee to $3.00 pmpm. This action is supported by the Medical Society of Virginia as well as a majority of the PCPs.

VR 460-04-8.14. Managed Care: "MEDALLION" Regulations.

§ 1. Definitions.

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

"ADC" means Aid to Dependent Children which is a public assistance program, administered by the Department of Social Services, providing financial assistance to needy citizens.

"ADC related" means those recipients eligible for assistance as an extension of the ADC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend-down medically needy clients.

"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.

"Client" or *"clients"* means an individual or individuals having current Medicaid eligibility who shall be authorized to participate as a member or members of "MEDALLION."

"Comparison group" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of "MEDALLION" clients.

"Covering provider" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the client's health in serious jeopardy;

2. Serious impairment to bodily functions; or

3. Serious dysfunction of any bodily organ or part.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"Gatekeeper" means the function performed by the "MEDALLION" primary care provider in controlling and managing assigned clients through appropriate levels of medical care.

"General practitioner" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"Primary care provider" or *"PCP"* means that "MEDALLION" provider responsible for the coordination of all medical care provided to a "MEDALLION" client and shall be recognized by DMAS as a Medicaid provider.

"Site" means, for purposes of these regulations, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"Specialty" or *"specialist services"* means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses.

"State" means the Commonwealth of Virginia.

§ 2. Program purpose.

The purpose of "MEDALLION" shall be to provide management in the delivery of health care services by

linking the primary care provider (PCP) with targeted clients. The PCP shall provide medical services as appropriate for clients' health care needs and shall coordinate clients' receipt of other health services. This shall include, but not be limited to, referral to specialty providers as medically appropriate.

§ 3. "MEDALLION" clients.

Clients of "MEDALLION" shall be individuals receiving Medicaid as ADC or ADC-related categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants. The following exclusions shall apply:

1. Exclusions. The following individuals shall be excluded from participating in "MEDALLION":

a. Individuals who are inpatients in mental hospitals and skilled nursing facilities;

b. Individuals who are receiving personal care services;

c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees.

d. A client may be excluded from participating in "MEDALLION" if any of the following apply:

(1) Client not accepted to the caseload of any participating PCP.

(2) Client whose enrollment in the caseload of assigned PCP has been terminated and other PCPs have declined to enroll the client.

2. Client enrollment process.

a. All ADC or ADC-related recipients excepting those meeting one of the exclusions of § 3 shall be enrolled in "MEDALLION."

b. Newly eligible individuals shall not participate in "MEDALLION" until completion of the Medicaid enrollment process. This shall include initial enrollment at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment that may occur.

c. Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with current procedures, after eligibility requirements are met.

d. Once clients are fully registered as "MEDALLION" clients, they will receive a "MEDALLION" identification card to replace the Medicaid card.

3. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

a. Clients shall notify DMAS of their PCP selection within 30 days of receiving their "MEDALLION" enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

b. Selected PCP shall be a "MEDALLION" enrolled provider.

c. PCP will provide 24-hour access, which shall include as a minimum a 24-hour telephone number to be placed on each client's "MEDALLION" card.

d. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

4. Mandatory assignment of PCP. Assignments shall be made for those clients not selecting a PCP as described in subdivision 3 of this section. The selection process shall be as follows:

a. Clients shall be assigned to "MEDALLION" providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty Any prior patient-provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible.

b. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

c. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

5. Changing PCPs. "MEDALLION" clients shall remain with the assigned PCP for a period of not less than six months. After that time clients may elect to change PCPs. Changes may be made annually thereafter.

a. Requests for change of PCP "for cause" are not subject to the six-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

(1) Client has a special medical need which cannot be met in his service area or by his PCP.

(2) Client has a pre-existing relationship with a Medicaid provider rendering care for a special medical need.

(3) Mutual decision by both client and provider to sever the relationship.

(4). Provider or client moves to a new residence, causing transportation difficulties for the client.

(5) Provider cannot establish a rapport with the client.

b. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

c. PCPs may elect to release "MEDALLION" clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, § 3 5 b shall apply.

6. "MEDALLION" identification card. Each client enrolled shall receive a "MEDALLION" card, which shall replace and be distinct from the Medicaid card in appearance, and embossed with the "MEDALLION" logo.

a. The front of the card shall include the client's name, Medicaid case identification number, birthdate, sex, PCP's name, address, 24-hour access telephone number, and the effective time period covered by the card.

b. The "MEDALLION" Hot Line 800 number will be listed on the card.

c. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

d. Emergency services shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

§ 4. Providers of services.

Providers who may enroll to provide "MEDALLION" services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with ~~primary care~~ subspecialties may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client-specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual-and-customary practice of general medicine by a board-certified specialist, maintenance of a pre-existing patient-physician relationship, or support of the special medical needs of the client.

4. DMAS shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a "MEDALLION" PCP.

§ 5. "MEDALLION" provider requirements.

A. PCPs must require their clients to present their currently effective "MEDALLION" card upon presentation for services.

B. PCPs shall track and document any emergency care provided to "MEDALLION" clients.

C. PCPs shall function as "gatekeeper" for assigned clients. Specific requirements shall include but are not necessarily limited to:

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.

2. Providing or arranging for physician coverage 24 hours per day, seven days per week.

3. Determining the need for and authorizing when appropriate, all nonemergency care.

4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics (AAP).

5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully

documented in the patient's medical record.

6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.

7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.

8. Documenting in each client's record all authorizations for referred services.

9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.

§ 6. Services exempted from "MEDALLION."

A. The following services shall be exempt from the supervision and referral requirements of "MEDALLION":

1. Obstetrical services;

2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;

3. Family planning services;

4. Routine newborn services when billed under the mother's Medicaid number;

5. Annual or routine vision examinations;

6. Dental services; and

7. Emergency services.

B. While reimbursement for these services does not require the referral from or authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

§ 7. PCP payments.

A. DMAS shall pay for services rendered to "MEDALLION" clients through the existing fee-for-service methodology and ~~an incentive payment plan~~ *a case management fee* .

~~B. Incentive plan.~~

~~"MEDALLION" providers may opt to participate in the following incentive plan:~~

~~Case management fees. A PCP can opt to receive a monthly $2.00 case management fee for each client assigned, plus an additional $2.00 per client incentive fee for each month the PCPs utilization is below the mean of his comparison group. Payment of fees shall be quarterly.~~

B. "MEDALLION" providers shall receive a monthly case management fee of $3.00 per client.

C. PCPs may serve a maximum of 1,000 "MEDALLION" clients. Groups or clinics may serve a maximum of 1,000 "MEDALLION" clients per authorized PCP in the group or clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

§ 8. Utilization review.

A. DMAS shall review claims for services provided by or resulting from referrals by authorized PCPs. Claims review shall include, but not be limited to, review for the following:

1. Excessive or inappropriate services;

2. Unauthorized or excluded services; and

3. Analysis of possible trends in increases or reductions of services.

§ 9. Client and provider appeals.

A. Client appeals.

Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of VR 460-04-8.7.

B. Provider appeals.

Providers shall have the right to appeal any adverse action taken by DMAS under these regulations pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

§ 10. "MEDALLION" phase-in across the Commonwealth.

DMAS presently has federal authority to administer "MEDALLION" in its initial phase consistent with its approved waiver. At such time as DMAS receives approval from the federal funding authority to expand "MEDALLION," the program shall be expanded in a phased-in manner to encompass the larger geographic areas.

STATE OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Addendum to Provider Agreement for Participation
as a Primary Care Provider in MEDALLION

This Addendum is entered into by the Department of Medical Assistance Services (the Department)

and_____(the Provider).
(Name of Physician)

of_____
(Street Address) (City & State) (Zip Code)

on this_____day of_____19___

1. This is an addendum to the Provider's Medicaid Participation Agreement ("the Agreement"). The Agreement will continue in force in accordance with its terms.

2. The provider agrees to function in the role of Primary Care Provider, hereafter referred to as the "PCP", as an authorized provider for MEDALLION. In this role, the Provider will provide, or arrange for the provision of, all routine preventative and treatment services normally provided by a primary care physician. This will include EPSDT services and the maintenance of a comprehensive medical record for each patient assigned to MEDALLION. In particular, the Provider will provide and/or coordinate patient management for the following services: physician services; hospital inpatient and outpatient services; ambulatory surgical center services and rural health center services; ancillary services to include laboratory, pharmacy, and radiology; and durable medical equipment and supplies. Providers must have admitting privileges at a local accredited hospital or must make arrangements for admissions with a physician who does have admitting privileges.

3. The Provider will provide or arrange for coverage for primary care services twenty-four (24) hours per day, seven (7) days per week. In the event the Provider fails to comply with this provision appropriate sanctions, up to and including termination of this Agreement, will be applied by the Department. See paragraph (10) of the Medicaid Provider Participation Agreement with respect to appeals, and the MEDALLION supplement to the Provider Manual with respect to sanctions.

4. The Provider will coordinate all other Medicaid authorized care for each patient enrolled in his or her MEDALLION caseload including referral to specialty providers for diagnosis or treatment. In referring for specialized evaluation and/or treatment, the PCP will provide the specialist with authorization to cover appropriate testing and treatment. This authorization may be verbal or written for a period appropriate to the illness. All subsequent referral claims must have the PCP's MEDALLION identification number on the claim form.

5. The Provider will not be required to authorize emergency care, obstetrical care, psychiatric or psychological care, annual or routine vision examinations, dental care, or other Medicaid authorized care exempted from MEDALLION as identified in the MEDALLION Medicaid Provider Manual Addendum (Section III).

6. Providers will receive the usual Medicaid fees for services rendered, and may participate in one of the two following incentive plans.

a. Provider receives monthly two dollar ($2) case management fee for each client assigned, plus an additional two dollar ($2) per client incentive fee for each month the Provider's utilization is lower than the mean of his control group.

b. Provider shares in fifty percent (50%) of annual savings accrued to the State due to reduction of inappropriate services with his caseload.

Specifics relating to the payment of incentive fees will be fully described in provider manual addenda published by the Department.

7. Participating Providers may not change their incentive plan choices until the current incentive has been in place for one year.

8. MEDALLION clients approved by the Department to be released from the care of their designated Provider will continue to receive care from that designated provider until another Provider has been assigned.

9. Provider Medicaid numbers will be used as the MEDALLION identification number.

10. This Addendum will expire concurrent with any termination or expiration of the Agreement. However, the Addendum may be terminated for any reason on thirty days notice by either party without mandatory termination of the Agreement.

Entered into by:

_____ _____
Signature of provider Date

_____ _____
Specialty IRS Ident.Number/Soc.Sec.

_____ _____
Board of Medicine License Number Telephone number

_____
Medicaid Provider ID Number

_____ _____
Director, Managed Care Division Date
Department of Medical Assistance Services

Mail completed form to: Managed Care Division
Department of Medical Assistance Services
Post Office Box 537
Richmond, Virginia 23204

FOR ENROLLMENT PURPOSES
PLEASE PROVIDE THE FOLLOWING ESSENTIAL INFORMATION

I. MEDALLION providers may enroll a maximum of 1,000 clients. I would like to establish an initial caseload of_____ clients.

II. Special medical services that I can provide for MEDALLION clients are as follows (example: bilingual capability, separate well and sick pediatric waiting rooms, etc.):

a)_____ b)_____

c)_____ d)_____

III. Locations where I provide service; Medicaid numbers associated with that location, and 24 hour accessible telephone number that patients will use to contact me. (Please list your locations in descending order by Medicaid caseload.)

a. Medicaid ID #	Telephone #	Address
_____	_____	_____
(This data will appear on client's MEDALLION identification card)		_____
		_____

b. Medicaid ID #	Telephone #	Address
_____	_____	_____
(This data will appear on client's MEDALLION identification card)		_____
		_____

ATTACH SEPARATE PAGE FOR ADDITIONAL LOCATIONS.

c. If part of a group practice, please list other physicians in your group who have enrolled in MEDALLION:

1) _____
2) _____
3) _____
4) _____
5) _____

IV. I select incentive plan (place X in block of choice)

_____ a) $2 case management fee plus $2 incentive per client per month

_____ b) 50% of annual savings from reduction of inappropriate services to provider's caseload.

_____
(Print Name) (Signature) (Date)

Mail completed copy to:

MEDALLION
Department of Medical Assistance Services
P.O. Box 537
Richmond, Virginia 23204

Note to Emergency Room Staff: In the event that a MEDALLION client presents to the ER with a non-emergent complaint, and refuses to contact their assigned Primary Care Provider (PCP) for further medical care, use this form to document and to notify the MEDALLION office of the incident.

NOTICE OF REFUSAL

§1. You, as a MEDALLION client, are enrolled under the care of a Primary Care Provider (PCP) who is your personal doctor and is responsible for coordinating your medical needs. **All non-emergent care must be authorized by your personal doctor** in order for payment for those services to be received.

§2. The purpose of MEDALLION is to provide appropriate care for you through your personal doctor. Unless it is a true emergency, you are requested to contact your personal doctor for further care.

§3. The staff of this Emergency Room has determined that your medical condition is considered to be a non-emergency, and would more appropriately be treated by your personal doctor. Your personal doctor, or his designated representative, is required to provide access to care for you 24 hours a day, 7 days a week. You can contact your personal doctor by calling the phone number listed on the front of your MEDALLION I.D. card.

§4. Should you insist upon treatment of your non-emergency medical condition in the Emergency Room, this action will be reported to MEDALLION.

§5. Questions should be directed to MEDALLION, 1-800-643-2273.

_____ _____
Client's signature Date

_____
Street or PO Box

_____ _____ _____
City State Zip Code

_____
Client's telephone number

_____ _____
Witness Date

****

E.R. Staff Comments: (Use reverse side of sheet if necessary)

_____

_____

_____
Name of Hospital

_____
Address

_____ _____
Contact person Telephone number

****

Forward original and pertinent documentation to: Director, MEDALLION

Copy to: 1) Client
2) Hospital Emergency Room

CHANGE OF DOCTOR REQUEST

Client's Name _____

Address 1 _____

Address 2 _____

City, State, Zip Code _____

Client's Medicaid I.D. Number: _____

IF YOU WANT ANOTHER DOCTOR INSTEAD OF THE ONE NAMED IN YOUR LETTER, LOOK AT YOUR LIST OF MEDALLION DOCTORS AND CHOOSE THE DOCTOR YOU WANT.

It is very IMPORTANT that you also give us your telephone number so we can reach you if necessary.

** THE DAYTIME TELEPHONE NUMBER WHERE YOU CAN BE REACHED IS:

_____

WRITE DOWN THE INFORMATION ABOUT THE DOCTOR YOU WANT ON THE LINES BELOW.

Doctor's Name: _____

Doctor's Office Address Code: _____

Doctor's Office Address
(If Doctor has more than one office listed on sheet (ex. 2a, 2b), indicate office address nearest you). _____

_____

_____

Please mail this completed form using the enclosed self-addressed envelope.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

REGISTRAR'S NOTICE: The repeal of 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 Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 615-50-6. Compliance with Service Program Policy Requirements (REPEALED).

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: June 30, 1993.

Summary:

The State Board of Social Services moved to repeal this regulation to comply with the law. The Office of the Attorney General has advised that this regulation is inconsistent with Virginia statutory law (Chapter 994 of the 1993 Virginia Acts of Assembly, Item 385), especially as it relates to chargebacks. Item 385 of Chapter 994 provides authority for the department to recoup any payments made on behalf of ineligible individuals from local departments of social services. This regulation establishes the scope and system for monitoring service program policy and defines the method for chargebacks to local departments of social services for payments made to or on behalf of an individual who is ineligible under federal or state statutes and regulations.

DEPARTMENT OF TAXATION

REGISTRAR'S NOTICE: The amendments to the following regulations are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department of Taxation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **Corporate Income Tax.**
VR 630-3-444. Several Liability of Affiliated Corporations.
VR 630-3-447. Execution of Returns.
VR 630-3-501. Time for Filing Declarations.
VR 630-3-502. Installment Payment of Estimated Tax.

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

Effective Date: June 30, 1993.

Summary:

These four regulations were adopted on September 14, 1984, effective for taxable years beginning on or after January 1, 1985. The regulations were issued prior to the January 1, 1985 effective date of the amendments to the Virginia Register Act (§ 9-6.15:1 et seq. of the Code of Virginia), and accordingly were never published in The Virginia Register.

These four regulations are being revised and restated to conform to the Virginia Register Form, Style and Procedure Manual.

Generally, the regulations explain the following areas of corporate income taxation:

VR 630-3-444 interprets § 58.1-444 of the Code of Virginia and explains the joint and several liability of corporations filing consolidated or combined returns.

VR 630-3-447 interprets § 58.1-447 of the Code of Virginia and explains the manner in which corporate tax returns shall be executed.

VR 630-3-501 interprets § 58.1-501 of the Code of Virginia and explains the time for declaration and payment of corporate estimated income tax.

VR 630-3-502 interprets § 58.1-502 of the Code of Virginia and explains amount of corporate estimated tax installments.

VR 630-3-444. Several Liability of Affiliated Corporations.

§ 1. Joint and several liability.

Each affiliated corporation included in a consolidated or combined return shall be jointly and severally liable for the entire tax and any assessments of additional tax, penalty and interest for the affiliated group. The Department of Taxation may assess and collect the tax for the consolidated or combined group against any one or more of the corporations included in a consolidated or combined return without regard for the tax such corporation might have owed had it filed a separate return or any other circumstances.

§ 2. Agreements.

Corporations may agree among themselves as to the liability for taxes, but such agreements shall have no effect on the tax liability owed by the affiliated group or on the joint and several liability of each member of the affiliated group.

VR 630-3-447. Execution of Returns.

~~(A)~~ *§ 1. Separate* corporations. ~~(1)~~

The return of a corporation with respect to its income

shall be signed by one of the following officers: president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. In the case of a return made for a corporation by a fiduciary such as a receiver, trustee or assignee, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

~~(2)~~ *§ 2.* Consolidated and combined returns. ~~(a)~~

A. The return of an affiliated group of corporations shall be signed by an officer of the lead corporation. The name and address of the lead corporation shall be shown on the return. All correspondence from the department to the affiliated group may be mailed to the lead corporation. The lead corporation will usually be a parent corporation, if the parent is subject to tax in Virginia, but may be any member subject to the tax in Virginia.

~~(b)~~ *B.* The return shall contain the following information for each member of the affiliated group included in the return:

~~(i)~~ *1.* Name, address and taxpayer I.D. No. of ~~the~~ *each* consenting corporation,

~~(ii)~~ *2.* Name, title and ~~phone~~ *telephone* number of an officer authorized to sign a return for the member,

~~(iii)~~ *3.* Name and address of the person with custody of the books of the member.

VR 630-3-501. Time for Filing Declarations.

~~(A)~~ *§ 1.* In general.

~~(1)~~ *A.* If a corporation expects its income tax less allowable credits to exceed $1,000 at the beginning of the taxable year then the corporation must make its declaration of estimated tax on or before the 15th day of the 4th month of the taxable year (April 15 for a calendar year corporation) and the declaration must be accompanied by the installment payment for the first quarter.

~~(2)~~ *B.* Corporations which expect their income tax less allowable credits to exceed $1,000 as a result of events occurring after the beginning of a taxable year shall make a declaration of estimated tax at the time specified in ~~paragraph (2) below~~ *subsection C of this section* . Examples of events occurring after the beginning of a taxable year are: a foreign corporation registering to do business in Virginia and acquisition of a corporation doing business in Virginia.

~~(3)~~ *C.* The date on which a corporation first estimates that its Virginia income tax less allowable credits will exceed $1,000 determines the date that the declaration of estimated tax is required to be filed.

~~(a)~~ *1.* If such date is before the 1st ~~say~~ *day* of the 4th month of the taxable year the declaration is required to be filed on or before the 15th day of the 4th month of the taxable year.

~~(b)~~ *2.* If such date is after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year the declaration is required to be filed on or before the 15th day of the 6th month of the taxable year.

~~(c)~~ *3.* If such date is after the last day of the 5th month and before the 1st day of the 9th month of the taxable year the declaration is required to be filed on or before the 15th day of the 9th month of the taxable year.

~~(d)~~ *4.* If such date is after the last day of the 8th month and before the 1st day of the 12th month of the taxable year the declaration is required to be filed on or before the 15th day of the 12th month of the taxable year.

~~(B)~~ *§ 2.* Amendments.

If a corporation expects its Virginia income tax less allowable credits to differ from the declaration of estimated tax for the taxable year, it shall amend the declaration. Only one amendment may be filed in the interval between installment dates. The amendment shall be reported on the voucher for the installment of estimated tax due after the corporation discovers the change in the estimated tax.

~~(C)~~ *§ 3.* Short taxable years.

No declaration of estimated tax is required for a short taxable year of less than four months or if the date the corporation first expects its estimated tax to exceed $1,000 occurs on or after the first day of the last month of the short taxable year. In all other cases the declaration is due as provided in ~~subsection (A) above~~ *§ 1 of this regulation* .

VR 630-3-502. Installment Payment of Estimated Tax.

~~(A)~~ *§ 1.* In general.

The estimated tax shall be paid in installments as follows:

~~(1)~~ *1.* If the declaration is required to be filed on the 15th day of the 4th month of the taxable year, ~~twenty-five percent~~ (25%) shall be paid with the declaration and on the 15th day of the 6th, 9th and 12th month of the taxable year.

~~(2)~~ *2.* If the declaration is required to be filed on the 15th day of the 6th month of the taxable year, ~~thirty-three percent~~ (33%) shall be paid with the declaration and on the 15th day of the 9th and 12th

month of the taxable year.

~~(3)~~ *3.* If the declaration is required to be filed on the 15th day of the 9th month of the taxable year, ~~fifty percent~~ (50%) shall be paid with the declaration and on the 15th day of the 12th month of the taxable year.

~~(4)~~ *4.* If the declaration is required to be filed on the 15th day of the 12th month of the taxable year, ~~one hundred percent~~ (100%) shall be paid with the declaration.

~~(B)~~ *§ 2.* Late declarations.

~~(1)~~ *A.* If the declaration is filed after the time prescribed then the corporation shall pay with the declaration all installments of estimated tax which would have been payable on or before the filing if the declaration had been filed within the prescribed time. Subsequent installments shall be payable as if the declaration had been timely filed.

~~(2)~~ *B.* ~~For example, on~~ *Example: On* January 1 a calendar year corporation expected its estimated tax to be $2,000 but did not file a declaration until June 15, even though the filing requirements for filing a declaration were met before April 1. Had the declaration been timely filed 50% of the estimated tax would have been paid on or before the filing (25% on April 15 and June 15). The corporation must pay 50% of the estimated tax with the declaration and 25% on September 15 and December 15.

~~(C)~~ *§ 3.* Amendments.

~~(1)~~ *A.* If the declaration of estimated tax is amended the amount payable with the *amended* declaration and the amount of each remaining installment (if any) shall be the difference between the new estimate and the amount actually paid prior to the amendment divided by the number of installments remaining. However, if the payments made exceed the new estimated tax the difference may not be refunded until the income tax return is filed for the taxable year.

~~(2)~~ *B.* ~~For example, a~~ *Example: A* corporation expects its estimated tax to be $2,000 and timely files its declaration and pays the first two installments of $500. Upon payment of the third installment the corporation amends its declaration of estimated tax to $3,000. The third and fourth installments are $1,000 each computed as follows: $3,000 new estimate less $1,000 paid to date divided by the two payments remaining equals $1,000.

~~(D)~~ *§ 4.* Short taxable year.

All installments due before the close of the short taxable year shall be paid. If the declaration is amended the corporation shall follow the same procedure for computing the amount of the remaining installments due before the close of the short taxable year.

~~(E)~~ *§ 5.* Application of payments.

All payments of estimated tax shall be applied toward the income tax liability of the taxpayer for the taxable year. No refunds of estimated tax may be obtained except upon filing of the income tax return for the taxable year. Payments of estimated tax may not be applied toward any other tax or taxable year unless and until an income tax return is filed showing a refund. In extraordinary circumstances where the taxpayer is not required to file an income tax return the taxpayer may request a refund of estimated tax.

* * * * * * * *

REGISTRAR'S NOTICE: The following amendments are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. In addition, amendments to VR 630-10-8, VR 630-10-18 and VR 630-10-29 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 conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Taxation will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulations: **Retail Sales and Use Tax.**
VR 630-10-2.1. Admissions.
VR 630-10-6.2. Aircraft Service Establishments.
VR 630-10-8. Alcoholic Beverages.
VR 630-10-13. Barber and Beauty Shops.
VR 630-10-14. Bookbinders and Paper Cutters.
VR 630-10-15. Book Rental Libraries.
VR 630-10-18. Cash and Trade Discounts.
VR 630-10-22. Chemicals.
VR 630-10-24.2. Concrete Mixer Trucks.
VR 630-10-25. Consignments.
VR 630-10-27.2. Coupons.
VR 630-10-29. Credit for Taxes Paid to Other States.
VR 630-10-35.1. Employers Selling to Employees.
VR 630-10-39.1. Feed Making.
VR 630-10-44. Gift Certificates.
VR 630-10-49.1. Indians.
VR 630-10-77. Painters and Paperhangers.
VR 630-10-91. Repossessed Goods.
VR 630-10-103. Tobacco Products.
VR 630-10-104. Trade-Ins.
VR 630-10-106. Transitional Provisions.
VR 630-10-108. Trustees, Receivers, Assignees, Executors, and Administrators.

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

Effective Date: July 1, 1993.

Summary:

The revisions to these regulations are nonsubstantive in nature in that they include only cosmetic or format changes. The amendments do not involve a change or a clarification of department policy. In addition, the amendments to VR 630-10-18 and VR 630-10-29 reflect changes in the retails sales and use tax resulting from 1986 legislation, and the amendments to VR 630-10-8 conform the regulation to changes in Virginia law.

VR 630-10-2.1. Admissions.

The tax does not apply to sales of tickets, fees, charges, or voluntary contributions for admissions to places of amusement, entertainment, exhibition, display, or athletic contests, nor to charges made for participation in games or amusement activities. However "cover charges" or "minimum charges" which include the provision of or the entitlement to food, drinks, or other tangible property constitute a sale of property and are subject to the tax. Admission fees or "door charges" which entail no right to receipt of or credit toward the purchase of food or other tangible personal property are not subject to the tax. ~~Section added 1/79. Section revised 1/85.~~

VR 630-10-6.2. Aircraft Service Establishments.

Establishments engaged in rendering aircraft services, such as crop dusters, which make no sales of tangible personal property must pay the tax on all tangible personal property used or consumed in their operations. ~~Section added 1/79. Section revised 1/85.~~

VR 630-10-8. Alcoholic Beverages.

Alcoholic beverages sold by the Virginia Alcoholic Beverage Control ~~Commission~~ *Board* through its government stores are ~~exempt from~~ *subject to* the Virginia Retail Sales and Use Tax Act ~~because they are subject to a tax under another Act . (See Va. Code § 4-1 et seq.).~~ The sales and use tax applies to all ~~other~~ retail sales of alcoholic beverages of every kind by every dealer. This includes sales of beer, wine, mixed beverages, etc. In each case the tax is computed on the total amount charged the customer by the dealer without deduction for excise or other taxes borne by the beverages. ~~Section revised 7/69; 1/79.~~

VR 630-10-13. Barber and Beauty Shops.

Barber and beauty shop operators are engaged primarily in rendering personal services, and their gross receipts are not subject to sales tax. They are the consumers of the materials used in their businesses and are required to pay the tax on all their purchases. When barber and beauty shop operators go beyond the rendition of personal services and sell tangible personal property such as wigs, toupees, tonics, etc., they are required to register and collect and pay the tax on such sales. An operator holding a Certificate of Registration is not entitled to buy any item under a resale certificate of exemption unless it is bought by him for outright sale in the form of tangible personal property. ~~Section revised 7/69; 1/79.~~

VR 630-10-14. Bookbinders and Paper Cutters.

Persons engaged in binding books are deemed to be fabricating such articles and the total charge for the binding is subject to the tax. Machinery and tools, fuel, power, energy, and supplies used directly in the binding process may be purchased exempt from the tax. (See ~~Section 1-63~~ *VR 630-10-63* for further description of the manufacturing/processing exemption.)

However, charges for the following transactions constitute charges for providing a service and are not subject to the tax:

~~(a)~~ *1.* Folding, when the customer provides the complete job to be folded;

~~(b)~~ *2.* Trimming and paper cutting, when the customer provides the complete job to be trimmed or cut; *and*

~~(c)~~ *3.* Application of stickers to paper envelopes, when the customer provides stickers and the items to which they are to be applied.

Items used in performing a service, such as paper cutters, glue, and folding machines, do not qualify under the manufacturing/processing exemption and are subject to the tax at the time of purchase. ~~Section revised 12/84.~~

VR 630-10-15. Book Rental Libraries.

Book sales to a rental library for rental to its customers are sales for resale not subject to the tax. Any person engaged in the business of renting or selling books is required to register as a dealer and to collect and pay the tax on charges made for such rentals or sales. ~~Section revised 1/79.~~

VR 630-10-18. Cash and Trade Discounts.

§ 1. Definitions.

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

"Cash or trade discount" includes a discount for the early payment of the purchase price, a discount attributable to the value of an item taken in trade, or a discount based upon the method of payment.

~~(A)~~ *§ 2.* Generally.

Cash and trade discounts taken on sales are not includible in the sales price for purposes of computing the tax. ~~As used herein, the term "cash or trade discount" includes a discount for the early payment of the purchase price, a discount attributable to the value of an item taken~~

~~in trade, and a discount based upon the method of payment.~~ The amount of such discounts may be deducted from gross sales provided the discounts have been included in gross sales.

~~(B)~~ *§ 3.* Computation of the discount.

In computing the amount of a discount which may be subtracted from gross sales, the discount must be allocated between sales price and sales tax. The following examples illustrate the application of this concept.

Example 1: Dealer A sells an item to a customer for $100 and bills the customer $100 for the item and $ ~~4~~ *4.50* for the tax. The terms of the sale provide for a 10% discount if the bill is paid within 30 days. The customer pays within 20 days and is therefore entitled to the discount, which is computed as follows:

Amount Billed	~~$104.00~~	*$104.50*
Sales Price	100.00	
Tax	~~4.00~~	*4.50*

Less 10% Discount

Sales price	100.00	x 10% =	10.00		
Tax	~~4.00~~	*4.50*	x 10% =	~~.40~~ *.45*	

Therefore, *the* customer remits ~~$93.60~~ *$94.05* which includes $90 in sales price and ~~$3.60~~ *$4.05* in sales tax. Dealer A may deduct $10.00 from gross sales, and will accordingly remit only ~~$3.60~~ *$4.05* in tax.

Example 2: Dealer B sells an item to a customer for $100 and bills the customer $100 for the item and ~~$4~~ *$4.50* for the tax. The terms of the sale provide for a $10 discount if the bill is paid within 30 days. The customer pays within 20 days and is therefore entitled to the discount, which is computed as follows:

Amount Billed	$	~~104.00~~	*104.50*		
Sales price		100.00			
Tax		~~4.00~~	*4.50*		
Less $10 Discount					
$ 10÷	~~1.04~~	*1.045*	= ~~9.62~~	*9.57*	sales price discount
			~~.38~~	*.43*	tax discount

Therefore, the customer remits $ ~~94.00~~ *94.50* which includes $ ~~90.38~~ *90.43 in sales price and $ 3.62 4.07* in sales tax. Dealer B may deduct $ ~~9.62~~ *9.57* from gross sales, and will accordingly remit only $ ~~3.62~~ *4.07* in tax.

Example 3: Dealer B repairs a piece of equipment for a customer and bills the customer $100 for parts, $50 for labor, and $ ~~4~~ *4.50* for tax. The terms of the sale provide for a $10 discount if the bill is paid within 30 days. B pays within 20 days and earns the discount which is computed as follows:

Amount Billed	$	~~110.00~~	*154.50*
Sales Price of Parts		100.00	
Separately Stated Repair Labor (nontaxable)		50.00	
Sales tax		~~4.00~~	*4.50*

Less $10 discount attributed as follows:

Attributable to Parts: (100 ÷ by $150) x $10 = $6.67

$6.67÷ by	~~1.04~~	*1.04*	= $ ~~6.41~~	*6.38*	sales price discount
			~~.26~~	*.29*	sales tax reduction

$3.33 attributable to nontaxable labor

Therefore, *the* customer remits $ ~~109~~ *144.50* , which includes $ ~~93.59~~ *93.62* in sales price for the parts, $ ~~3.74~~ *4.21* in sales tax attributable to the parts, and $46.67 for nontaxable labor. Dealer B may deduct $ ~~6.41~~ *6.38* from gross sales and will accordingly remit only $ ~~3.74~~ *4.21* in tax.

Regardless of whether a cash or percentage discount is used, the discount must be allocated between *the* sales price and *the* tax to avoid overcollection of the tax.

VR 630-10-22. Chemicals.

Retail sales of chemicals are taxable. Any person who buys chemicals for use or consumption in rendering services or performing repair work is required to pay the tax on such chemicals at the time of purchase. For example, a dry cleaner who purchases cleaning fluid for use in performing cleaning services must pay the tax on such fluid at the time of purchase.

Chemicals for use directly in manufacturing or processing (see ~~Section 1-63~~ *VR 630-10-63*) ; , for direct and exclusive use in basic research or research and development in the experimental or laboratory sense (see ~~Section 1-92~~ VR 630-10-92) ; , or for use in agricultural production for market (see ~~Section 1-4~~ *VR 630-10-4*) ; may be purchased exempt from the tax. ~~Section revised 1/79; 12/85.~~

VR 630-10-24.2. Concrete Mixer Trucks.

§ 1. Generally.

A concrete mixing unit mounted on a truck is classified as machinery used directly in manufacturing and such mixing unit may be purchased free of the sales and use tax provided the concrete is produced for sale or resale and not for the manufacturer's own use. ~~(See § 630-10-63.)~~ The truck itself is not subject to retail sales and use tax provided it is subject to the motor vehicle sales and use tax and this tax has been paid. ~~(See § 630-10-67.)~~

The term "mixing unit" is restricted to the rotating

mixer and the accessories necessary for connecting it with the motor. Where a separate motor operates the rotating mixer exclusively, such motor is exempt from the sales tax, but where a motor operates the truck and also the rotating mixer, the motor is regarded as a part of the truck proper, and repair or replacement parts are not exempt. Repair or replacement parts for the mixing unit itself are exempt; but tires, tubes, batteries, oil, and all repair or replacement parts for the truck portion of the mixer-truck are taxable.

§ 2. Sales.

The tax applies to retail sales of concrete produced in concrete mixer trucks. The amount on which the tax must be computed includes the charge for the concrete as well as any other service charges connected with such sale. Examples of taxable service charges include "short load," "holding time" charges, and any other transportation charges, regardless of whether such charges are separately stated.

§ 3. Applicability of this regulation.

The foregoing does not apply to the status of concrete mixer-trucks under the Virginia Motor Vehicle Sales and Use Tax Act. Moreover, this section does not deal with the status of highway contractors or their mixer-trucks under the Virginia Retail Sales and Use Tax Act. ~~For highway contractors specifically, see § 630-10-27. Section revised 1/85.~~

VR 630-10-25. Consignments.

Tangible personal property consigned, delivered or entrusted to a dealer for the purpose of sale is taxable at the time of sale at retail. The tax must be collected in accordance with the definition of sales price in *§ VR* 630-10-95 with no deduction for the amount of any consignment commission. ~~Section revised 1/79.~~

VR 630-10-27.2. Coupons (Redeemable).

~~A.~~ *§ 1.* Manufacturer's coupons.

The value of a manufacturer's coupon is included in the sales price of the advertised merchandise. For example, when a retailer accepts $.80 in cash and a manufacturer's coupon valued at $.20 for a product, the tax is computed on $1.00.

However, where a retailer redeems a manufacturer's coupon for an amount in excess of the coupon's value, e.g., "double coupon value" discounts, the excess is treated as a discount to the product's price and may be deducted in computing the tax. For example, a retailer advertises that he will give double value for all manufacturer's coupons. A customer purchases a $3.00 jar of coffee and gives the retailer a $.50 manufacturer's coupon, thus paying only $2.00 for the coffee. The tax is computed on $2.50 which is the sales price of the coffee less the extra $.50 retailer discount.

~~B.~~ *§ 2.* Retailer's coupons.

The value of a retailer's coupon is not included in the sales price of the advertised merchandise. For example, when a retailer accepts $.80 in cash and a retailer's coupon valued at $.20 for a product, the tax is computed on $.80. This coupon has no value to the retailer and is an advertisement of a discount. ~~For cash discounts, see § 630-10-18. Section added 1/79; section revised 12/84.~~

VR 630-10-29. Credit for Taxes Paid to Other States or Their Political Subdivisions.

~~A.~~ *§ 1.* Generally.

Any person who purchases tangible personal property in another state and who has paid a sales or use tax to such state ~~and/~~ or its political subdivision *or both* on the property, is granted a credit against the use tax imposed by Virginia on its use within this state for the amount of tax paid in the state of purchase. This credit does not require that the state of purchase grant a similar credit for tax paid to Virginia. This credit does not apply to tax erroneously charged or incorrectly paid to another state. For example, if a person purchases and takes delivery in Virginia of tangible personal property purchased from an out-of-state dealer who incorrectly charges out-of-state tax, no credit is available. The purchaser must apply to the out-of-state seller for refund.

~~B.~~ *§ 2.* Amount of credit.

The credit provided in this section is equal to the tax paid to the state ~~and/~~ or political subdivision *or both* in which the property was purchased, but cannot exceed the Virginia use tax imposed on the property. For example, if property is purchased in a state which imposes a 6.0% sales and use tax, the credit is limited to the 4.5% use tax imposed by Virginia.

~~C.~~ *§ 3.* Claiming the credit.

To obtain a credit for tax paid to another state or its political subdivision, a person must apply, by letter, to the department and include a copy of the appropriate invoice stating the amount of tax billed and the state ~~and/~~ or political subdivision *or both* to which it was paid. A person requesting credit may be required by the department to furnish an affidavit stating that the tax has been paid and has not been refunded. ~~Section revised 1/79; 1/85.~~

VR 630-10-35.1. Employers Selling to Employees.

An employer selling tangible personal property to employees for use or consumption must include the receipts from the sales in his gross taxable sales. This applies even if the employer makes sales only to his employees and not to the general public. *Meals sold or*

furnished without charge to employees are addressed in VR 630-10-64. ~~For meals, see § 1-64. Section added 7/69.~~

VR 630-10-39.1. Feed Making.

~~The~~ *When used directly in making feed for sale or resale, the* tax does not apply to *the following items:*

1. Machinery, tools, or repair parts;

2. Cereal grains and other feed ingredients;

3. Fuel, power, or energy; or

4. Supplies.

~~used directly in making feed for sale or resale.~~ Feed ingredients include drugs, vitamins, minerals, nonprotein nitrogen, supplements, and additives. Tangible personal property used in administration, distribution, or indirectly in feed making, such as in heating and illumination of a building, is subject to the tax. ~~Section added 3/83.~~

VR 630-10-44. Gift Certificates.

The sale of a gift certificate is not taxable. When the owner of a gift certificate redeems it, in whole or in part, for tangible personal property, the transaction is a taxable sale. For example, if the owner of a gift certificate valued at $25 purchases a $15 pair of shoes, the tax on the $15 sale must be collected by the dealer and paid to the ~~state~~ *department* . When the owner redeems the remaining $10 value of the certificate, the tax on the sale must be collected at that time by the dealer. ~~Section revised 1/79.~~

VR 630-10-49.1. Indians.

The tax does not apply to sales made by Indians to Indians on their reservation. Sales by outsiders to Indians, sales by Indians to outsiders, and all sales made off the reservation are subject to the sales tax. Indians selling to outsiders on the reservation are required to register as dealers and collect the tax from their purchasers. ~~Section added 12/84.~~

VR 630-10-77. Painters and Paperhangers.

The tax does not apply to the charges for services performed by painters and paperhangers. They are consumers of all tangible personal property used by them and must pay the tax to their suppliers on purchases of paint, wallpaper, supplies, equipment, etc. ~~Section revised 7/69; 1/79.~~

VR 630-10-91. Repossessed Goods.

A dealer who has paid the sales tax on tangible personal property sold under a retained title, conditional sale or similar contract, and later repossesses the property, may deduct from gross sales the unpaid balance of the sales price due him at the time he repossesses the property. The deduction should be taken in the appropriate place on the *sales tax* return covering the period in which the property is repossessed. Adequate records must be kept to disclose the essential facts and figures regarding repossessed goods. When any repossessed tangible personal property is resold, the sale is subject to the sales tax. ~~For sales of repossessed property by banks see Section 630-10-12; for sales of repossessed goods by loan and finance companies, see Section 630-10-59. Section revised 1/79/1/85.~~

VR 630-10-103. Tobacco Products.

The tax applies to retail sales of cigarettes, cigars and other tobacco products. The tax is computed on the sales price ~~(see SECTION 1-95)~~ *as set forth in VR 630-10-95* without any deduction for excise or other taxes on the products, whether such taxes are levied by the United States, the Commonwealth of Virginia, or any city, town or county. ~~Section revised 1/79; 1/85.~~

VR 630-10-104. Trade-Ins.

Where used articles are taken in trade, or in a series of trades as a credit or partial payment on the sale of new or used articles, the tax must be paid on the net difference between the sales price of the new or used article and the credit for the used articles. Any trade-ins subsequently sold are subject to the tax. ~~For cash and trade discounts, see § 630-10-18. Section revised 1/79; 1/85.~~

VR 630-10-106. Transitional Provisions.

§ 1. Generally.

Effective January 1, 1987, the state sales and use tax rate increased from 3.0% to 3.5%, while the local sales and use tax rate of 1.0% remained the same.

The increased rate applies to all tangible personal property delivered to a purchaser and paid for on or after January 1, 1987, even though the property may have been ordered prior to January 1, 1987. The increased rate will not apply to tangible personal property delivered prior to January 1, 1987, but paid for on or after January 1, 1987. The increased rate also will not apply when a taxable sale or lease payment is paid for in full prior to January 1, 1987, even though delivery may occur on or after January 1, 1987 or the lease payment may cover a period beginning on or after January 1, 1987.

Notwithstanding the January 1, 1987, increase in the sales and use tax rate, § 58.1-639 of the Code of Virginia provides for the refund of the additional 0.5% tax paid on tangible personal property purchased or leased under certain contracts and leases entered into before October 27, 1986, (the date the sales and use tax rate increase was enacted).

The contracts and leases subject to the transitional provisions are (i) bona fide real estate construction

contracts (including highway construction contracts), (ii) contracts for the sale of tangible personal property, and (iii) leases of tangible personal property.

§ 2. Bona fide real estate construction contracts.

A. Generally.

Refunds of the additional 0.5% sales and use tax paid on and after January 1, 1987, are available when tangible personal property is purchased or leased under a bona fide real estate construction contract or bona fide highway construction contract entered into before October 27, 1986. A "bona fide" contract is one that contained plans and specifications before October 27, 1986. Refunds will not be available, however, in the event that a bona fide contract is renegotiated or to the extent that a contract is expanded to include additional work or the furnishing of additional materials (also see § 2 D relating to extensions of a contractually stated completion date).

Refunds will be available only for the additional 0.5% tax paid on (i) materials permanently incorporated into real estate, and (ii) construction supplies, fixtures, equipment, etc., that enter into the construction of or become a part of a structure, highway, etc. Further, refunds will be limited to property purchased or leased in connection with a specific contract and used exclusively in such contract. Thus, refunds will not be available for the additional 0.5% tax paid on equipment, materials, supplies, tools, etc. that will be used in more than one contract.

As noted below, rules for obtaining refunds of the additional 0.5% tax paid on and after January 1, 1987, on purchases or leases under bona fide real estate construction contracts vary depending on whether or not the contract contains a specific and stated date of completion.

B. Contracts that do not contain a specific and stated date of completion.

In the case of bona fide real estate construction contracts that do not contain a specific and stated date of completion, refunds of the additional 0.5% tax may be claimed only with respect to purchased or leased tangible personal property that is delivered to the contractor on or before March 30, 1987.

Example:

Contractor A enters into a bona fide contract before October 27, 1986, for the erection of a home, but the contract does not contain a specific and stated date of completion. After January 1, 1987, Contractor A makes two orders of materials for use in the project and pays the full 4.5% sales tax on the materials. Because the contract did not contain a specific and stated date of completion, Contractor A must take delivery of goods purchased for use in the project on or before March 30, 1987, in order to receive a refund of the 0.5% tax. The first order is delivered to Contractor A on March 30, 1987, but the second order is delivered to Contractor A on April, 1987. Thus, Contractor A may receive a refund of the additional 0.5% tax paid on the first order, but will not be able to receive a similar refund on the second order because it was delivered after March 30, 1987.

C. Contracts that contain a specific and stated date of completion.

In the case of bona fide real estate construction contracts that contain a specific and stated date of completion, refunds of the additional 0.5% tax paid on and after January 1, 1987, will be available for all property delivered to the contractor on or before the completion date specified in the contract.

Example:

Contractor B enters into a bona fide contract before October 27, 1986, for the erection of a bridge. The contract contains a specific and stated completion date of June 30, 1989. On and after January 1, 1987, Contractor B pays the full 4.5% sales and use tax on his purchases of materials for use in the contract and all such materials, except one shipment, are delivered to the contractor by the June 30, 1989 date of completion. The last shipment of materials is delivered to Contractor B on July 1, 1989. Refunds of the additional 0.5% tax paid by Contractor B will be available for all materials delivered to him by the specified completion date stated in his contract, June 30, 1989. However, a refund will not be available for the additional tax paid on the last delivery because that delivery occurred after the specified and stated completion date for the project.

Both contracts containing a specific date for completion, e.g., July 1, 1988, and contracts containing a specific number of calendar days for completion, e.g., 150 calendar days, shall be considered as contracts with a specific and stated date of completion.

When a subcontractor performs work for a general contractor, the date of completion for purposes of this section is the date stated in the subcontract and not the completion date specified in the contract between the general contractor and the customer.

D. Extension of contractual completion date.

The refund provisions of § 2.C, contracts that contain a specific and stated date of completion, do not apply when the completion date specified in a bona fide real estate construction contract is extended for any reason. In the event that the completion date specified in a bona fide real estate construction contract is extended, refunds of the additional 0.5% tax paid on and after January 1, 1987, will be available only for property delivered on or before the completion date specified in the original contract.

E. Nonbona fide real estate construction contracts.

Refunds of the additional 0.5% tax paid by contractors on and after January 1, 1987, will not be available when purchases or leases are made pursuant to nonbona fide real estate construction contracts. A nonbona fide contract is one that did not contain plans or specifications before October 27, 1986. Contracts that are entered into on or before October 27, 1986, without plans or specifications but which are amended after October 27, 1986, to include plans or specifications are also not bona fide contracts.

§ 3. Contracts for the sale of tangible personal property.

A. Generally.

Refunds of the additional 0.5% tax paid on and after January 1, 1987, may be claimed for tangible personal property purchased under sale contracts entered into before October 27, 1986, provided the property is delivered to the purchaser on or before March 30, 1987. Refunds will not be available if a sale contract was entered into on or after October 27, 1986, or if the property purchased is delivered to the purchaser after March 30, 1987.

B. Layaway sales.

The provisions for the refund of the additional 0.5% tax apply to all layaways made before October 27, 1986, and delivered to the purchaser on or before March 30, 1987.

Examples:

1. Customer A makes a layaway of an item of merchandise on October 26, 1986, and takes delivery of the merchandise on March 1987. Customer A will be required to pay the full 4.5% tax when he completes the layaway purchase, but he will be able to request a refund of the additional 0.5% tax he pays.

2. Customer B makes a layaway of an item of merchandise on October 26, 1986, but does not take delivery of the merchandise until April 1, 1987. Customer A will be required to pay the full 4.5% sales tax on the purchase, but will not be able to request a refund of the additional 0.5% tax because he did not take delivery of the merchandise until after March 30, 1987.

C. Gift certificates.

Pursuant to VR 630-10-44, the sales tax is not to be collected on the sale of gift certificates, but is to be collected when gift certificates are redeemed for merchandise. Because gift certificates are not taxable until redeemed, refunds of the additional 0.5% tax paid on purchases made with gift certificates on and after January 1, 1987, will not be available.

D. Installment sales.

Pursuant to VR 630-10-28, the sales and use tax is due in full when a agreement for an installment sale is made. VR 630-10-28 does not permit the tax on an installment sale to be paid in installments. Therefore, all installment sales prior to January 1, 1987, will be subject to state and local sales and use tax at a rate of 4.0%, while sales on and after January 1, 1987, will be subject to tax at a 4.5% rate. Because the tax on installment sales is due as of the date the contract of sale is entered into, refunds of the additional 0.5% tax paid on an installment sale on and after January 1, 1987, will not be available.

E. Maintenance contracts.

The sale of maintenance contracts which provide in whole or in part for the furnishing or replacement of parts is a taxable sale of tangible personal property pursuant to VR 630-10-62.1. As with other sales of tangible personal property, the sales and use tax becomes due in full when the contract is entered into. Therefore, all taxable maintenance contracts entered into before January 1, 1987, will be subject to the tax at a rate of 4.0%, while those taxable maintenance contracts entered into on or after January 1, 1987, will be subject to the tax at a rate of 4.5%. Because the tax on such contracts becomes due as of the date the contract is entered into, refunds of the additional 0.5% tax paid on and after January 1, 1987, will not be available.

§ 4. Leases of tangible personal property.

Refunds of the additional 0.5% sales tax paid on leases on and after January 1, 1987, will be available, provided that (i) the lease is entered into before October 27, 1986, and (ii) the leased property is delivered to the lessee by March 30, 1987. However, refunds will not be available for the additional tax paid on leases entered into on or after October 27, 1986, or where leased property is delivered to the lessee after March 30, 1987.

So long as the above two conditions are met, refunds may be requested for the additional 0.5% tax paid over the course of a lease. For instance, a person who enters into a five-year equipment lease on October 26, 1986, and who takes delivery of the equipment by March 30, 1987, would be able to seek refunds of the extra 0.5% tax paid for periods through the end of the five-year lease period.

However, if the lessee assigns the lease, or if the property is turned over to anyone else, refunds of the additional 0.5% tax will not be available for tax paid after the change. In addition, refunds of the additional 0.5% tax will not be available if there are replacements of the property leased (except for replacements due to defective goods), if additional property is added to the lease, or if the lease is renegotiated or renewed.

§ 5. Refunds.

A. Limited to purchaser or lessee only.

Refunds of the additional 0.5% tax paid on purchases or

leases of tangible personal property under bona fide real estate construction contracts, contracts for the sale of tangible personal property, or leases of tangible personal property will be limited only to the purchaser or lessee of the property.

B. Refunds to be requested from Department of Taxation only.

The purchaser or lessee of tangible personal property under qualifying contracts or leases shall request refunds of the additional 0.5% tax directly from the Department of Taxation and not from the seller or lessor of the property. In seeking refunds, the purchaser or lessee shall furnish the Department of Taxation with copies of the contract or lease under which property is purchased or leased. In addition, the purchaser or lessee shall indicate the delivery date of all items for which refunds are claimed and shall be able to demonstrate that the 4.5% Virginia tax was actually paid to his suppliers or lessors. Copies of invoices will be required to verify that the 4.5% tax was paid on purchases or leases of tangible personal property for which refunds are requested.

C. Time limitation on seeking refunds.

Pursuant to § 58.1-1823 of the Code of Virginia and VR 630-10-89, requests for refunds of the additional 0.5% tax paid pursuant to qualified contracts or leases must be made within three years of the date tax became due. For instance, tax paid by a lessee in January 1987 does not become due to the department from the lessor until February 20, 1987; thus, the lessee would have until February 20, 1990, to seek a refund.

D. Interest on refunds.

Interest on refunds will be computed in the manner set forth in § 58.1-1833 of the Code of Virginia. Under this statute, interest is computed from a date beginning 60 days after the due date of the tax and ending on a date not more than 30 days preceding the date of the refund check ~~(also see VR 630-1-1833)~~ . For example, the tax paid by a purchaser in February 1987 does not become due to the department until March 20, 1987; thus, interest on the refund of the additional 0.5% tax would be computed starting on May 19, 1987, which is 60 days from the March 20 due date.

~~Regulation added 1/87, regulation revised 5/88.~~

VR 630-10-108. Trustees, Receivers, Assignees, Executors, and Administrators.

A trustee, *a* receiver, an assignee, *an* executor, or *an* administrator who continues to operate, manage, or control a business engaged in making retail sales of tangible personal property must make application for a new Certificate of Registration except for a corporation which continues to exist as the same legal entity. The tax must be collected and paid like any other dealer. It is immaterial that such officer or person may have been appointed by a court.

The personal representative of a decedent sometimes finds it necessary, in the course of his administration of an estate, to sell some or all of the tangible personal property coming into his hands as executor or administrator, such as household goods and personal effects, etc. A personal representative doing this, including a sheriff or sergeant who is acting as administrator, is not required to register to collect the sales tax on such sales, because they are regarded as *an* occasional *sale* . ~~(See Section 1. 75)~~ However, if the personal representative engages an auctioneer to sell the property, the sales are not occasional to the auctioneer and the tax applies. ~~(Section 1-9.) Section revised 7/69;1/70.~~

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-01-01. Fees for Permits and Certificates.**

Statutory Authority: § 62.1-44.15:6 of the Code of Virginia.

Effective Date: July 1, 1993.

Summary:

In accordance with Article 2.1 of the State Water Control Law titled Permit Fees, the State Water Control Board has adopted a regulation setting forth a fee assessment and collection system.

Fees are to pay for part of the cost of processing applications to issue, reissue, or modify permits. These fees will also provide for payment to the Departments of Game and Inland Fisheries and Conservation and Recreation for the permits and certificates issued by the board which they are required by law to review.

Fees are limited to maximums which are specified in statute and must be based on the time and complexity involved in reviewing the applications and developing and issuing permits. Fees for permit and certificate issuance and reissuance were developed on this basis. Fees for major modifications requested by the permit or certificate holder are 50% of the fees for permit or certificate issuance or reissuance. There is no fee for minor modifications or for modifications initiated by the agency.

All fees from applicants for permits covering agricultural operations engaged in production for market have been reserved.

Fees will be charged all other applicants for new permits, reissued permits and permit modifications who applied on or after July 1, 1992, and where a new, reissued, or modified permit has not been issued as of the date the regulation takes effect. Once the

fee regulation takes effect, all fees will be due with the application for the permit or certificate. Applicants who applied on or after July 1, 1992, where permit processing is not complete before the effective date of the regulation, will be required to pay the full fee before a permit is issued unless a public notice has been published. If a public notice has been published, 50% of the full fee will be due prior to issuance of the permit.

Exempt from payment of fees are applicants who submitted complete applications before the fee legislation took effect on July 1, 1992, whether or not a permit or certificate is issued before the effective date of this regulation. Applicants who filed applications on or after July 1, 1992, who are issued a permit before the regulation takes effect are also exempt from paying a fee.

As a result of comments received during the public comment period and the advice of the Office of the Attorney General, a number of changes were made to the regulation as it was proposed. Technical revisions were made to the following definitions in § 1.1: "Applicant," "Application," "Existing permit," "New permit," and "Revoked permit." A definition was added for "Major modification" and substantive revisions were made to the definition for "Minor modification." The definitions for "VWP Category I," "VWP Category II," and "VWP Category III" were also revised to reflect the most current classifications of exemplary project types for the purpose of assessing permit fees.

In response to comments from the public, no fees will be charged for agency-initiated modifications. Accordingly, §§ 1.4 3, and 3.1 C, and 3.3 as initially proposed, which pertained to these modifications, were deleted. Modifications initiated by the agency are specifically exempted from fees by § 1.5 4.

Subsections of § 1.5 exempting minor modifications of permits as defined in the various permit regulations were deleted and new § 1.5 3 included which relies on the definition of minor modification as specified in the fee regulation itself as the basis for exemption for this type of action.

The fees in categories specifically referring to agricultural operations (§ 3.2 2, 3.2 4, and 3.2 5) were reserved pending amendment of the regulation to conform with 1993 legislation exempting agricultural operations engaged in production for market that takes effect July 1, 1993. As initially proposed, the statutory maximums for these categories were included.

A number of other changes and additions to the fee schedule for permit issuance and reissuance were also made. Categories for VPDES Municipal Industrial Stormwater Permits were added with fees of $7,100 and $2,400, respectively (§ 3.2 1). A separate category for VPDES Municipal Minors with discharges of 1,000 gallons per day or less with a fee of $1,400 was also added (§ 3.2 1). The fee for VWP Category III Projects was decreased from $900 to $800 (§ 3.2 3). Categories for Surface Water Withdrawal Certificates for existing nonagricultural withdrawals with a fee of $2,000 and Surface Water Withdrawal Permits for new or expanded nonagricultural withdrawals with a fee of $3,000 were added to § 3.2 4; the regulation as initially proposed had included a single category for both with a fee of $4,000. Likewise, separate categories for Ground Water Withdrawal Permits for existing nonagricultural uses and new and expanded agricultural uses (§ 3.2 5) have been included with fees of $400 and $2,000, respectively; the regulation as initially proposed had included a single category with a fee of $2,000.

A proration of issuance/reissuance fees was initially proposed for major modifications requested by the permittee. The regulation now includes a modification fee schedule based on a flat 50% of the issuance/reissuance fee. A new § 3.3 was added which includes the modification fee schedule.

A separate section (§ 3.4) was added covering fees for general permits. Zero dollar fees are set for general permit coverage for municipal facilities discharging 1,000 gallons or less per day and for Correction Action Plan Permits associated with leaking underground storage tanks. The maximum fee for coverage under any existing or subsequently adopted general permit will be $200 and will be prorated based on the time left before the permit expires.

VR 680-01-01. Fees for Permits and Certificates.

PART I.
GENERAL.

§ 1.1. Definitions.

Unless otherwise defined herein or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's Permit Regulation VR [~~*680-14-01*~~ *680-14-01:1*] *, § 1.1; the board's Virginia Water Protection Permit Regulation VR 680-15-02, § 1.1; the board's Surface Water Management Area Regulation VR 680-15-03, § 1.1; and the Ground Water Management Act of 1992, § 62.1-255* [*, including any general permits issued thereunder*].

"Applicant" means for the [~~*purpose*~~ *purposes*] *of this regulation any person filing an application for issuance, reissuance, or modification, except as exempted by § 1.5, of* [*a*] *permit [* ~~*or*~~ *,] certificate* [*or special exception or filing a registration statement for coverage under a general permit*] *issued pursuant to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254*

et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the [~~purpose~~ purposes] of this regulation the forms approved by the State Water Control Board for applying for issuance or reissuance of a permit [~~or~~ ,] certificate [or special exception or for filing a registration statement for coverage under a general permit] issued pursuant to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit [~~or~~ ,] certificate [or special exception] requested by the permit [~~or~~ ,] certificate [or special exception] holder and not exempted by § 1.5, the application shall consist of the formal written request and any accompanying documentation submitted by the permit [~~or~~ ,] certificate [or special exception] holder to initiate the modification. [~~In the case of modifications to an existing permit or certificate initiated by the State Water Control Board and not exempted by § 1.5, the application shall consist of the written response and any accompanying documentation submitted by the permit or certificate holder in response to the board's action to initiate the modification.~~]

"Existing permit" means for the purposes of this regulation a permit [~~or~~ ,] certificate [or special exception] issued by the board and currently held by an applicant.

" [~~Modification~~ Major modification] " means for the purposes of this regulation modification or amendment of an existing permit [or ,] certificate [or special exception] before its expiration [which is not a minor modification as defined in this regulation].

["Minor modification" means for the purposes of this regulation minor modification or amendment of an existing permit, certificate or special exception before its expiration as specified in §§ 5.4 B and 5.4 C of VR 680-14-01:1, § 4.4 of VR 680-15-02, § 4.4 of VR 680-15-03, or in regulations promulgated pursuant to Chapter 25 of Title 62.1 of the Code of Virginia. Minor modification for the purposes of this regulation also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules.]

"New permit" means for the purposes of this regulation a permit [~~or~~ ,] certificate [or special exception] issued by the board to an applicant that does not currently hold and has never held a permit [~~or~~ ,] certificate [or special exception] at that location.

"Revoked permit" means for the purposes of this regulation an existing permit [~~or~~ ,] certificate [or special exception] which is terminated before its expiration.

"VWP Category [~~1~~ I] Project" means [for the purposes of this regulation] a project requiring complex staff review including, but not limited to, those which affect instream flows such as reservoirs, hydropower impoundments, and surface water withdrawals; major subdivisions, industrial parks, commercial developments, and regional stormwater facilities which cumulatively impact more than 10 acres of wetlands [~~or result in channel modifications or relocation of perennial streams of 60 linear feet or more~~] ; projects in waters containing wild trout or threatened or endangered species; new marinas, navigational dredging projects, and instream sand and gravel mining operations.

"VWP Category [~~2~~ II] Project" means [for the purposes of this regulation] a project requiring moderately complex staff review including, but not limited to, those impacting between one and 10 acres of [isolated or headwaters] wetlands, stream channel modifications [; ~~channelizations~~] or relocations [~~less than 60 linear feet; impoundments in nonperennial streams for the purpose of stormwater management which do not require a VPDES permit~~ of perennial streams] ; rip rap and bank stabilization of 500 feet or more; expansion of existing marinas and dredging of navigation channels.

"VWP Category [~~3~~ III] Project" means [for the purposes of this regulation] a project requiring routine staff review including, but not limited to, those which impact one acre or less of [~~isolated~~ adjacent] nontidal wetlands [; ~~bulkheads, groins, and jetties comprised of nonerodible materials free from debris and toxic constituents~~] ; dredging for single residence boatslips [and access channels] ; perpendicular [or linear] sub-bed crossings of pipelines for sewer and other utilities in [~~water~~ waters] which do not contain wild trout or threatened or endangered species; impoundments in nonperennial streams, [~~as well as~~ for the purpose of stormwater management which do not require a VPDES permit, including piping, filling,] relocations and channel modifications of such streams, provided that wetland impacts do not exceed one acre, and the stream does not contain threatened or endangered species.

§ 1.2 Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the State Water Control Board's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit or certificate which the board has the authority to issue from the applicant for such permit or certificate. These regulations establish the required fee assessment and collection system.

§ 1.3. Authority.

The authority for these regulations is pursuant to §§ 62.1-44.15(7) and (10) and 62.1-44.15:6 of the Code of

Virginia.

§ 1.4. Applicability.

A. This regulation applies to:

1. All applicants for issuance of a new permit or certificate or reissuance of an existing permit or certificate who apply on or after July 1, 1992, that have not been issued a permit or certificate as of the effective date of this regulation. The fee due shall be as specified under § 3.2 [~~or~~ ,] § 3.4 [or § 3.5] of this regulation.

2. All permit or certificate holders who request that an existing permit or certificate be modified, except as specifically exempt under § 1.5 of this regulation, who apply on or after July 1, 1992, whose permit or certificate has not been modified as of [~~the effective date of this regulation~~ July 1, 1993] . The fee due shall be as specified under [~~§ 3.2~~ § 3.3] or [~~§ 3.4~~ § 3.5] of this regulation.

[~~3. All permit or certificate holders whose existing permit is modified by an action initiated by the board, except as specifically exempt under § 1.5 of this regulation, who apply on or after July 1, 1992, whose permit or certificate has not be modified as of the effective date of this regulation. The fee due shall be as specified under § 3.3 or § 3.4 of this regulation.~~]

B. An applicant for a permit or certificate involving a revoked permit which is to be reissued shall be considered an applicant for a new permit. The fee due shall be as specified under § 3.2 or [~~§ 3.4~~ § 3.5] of this regulation.

§ 1.5. Exemptions.

No permit application fees will be assessed to:

1. Applicants for permits or certificates who submitted complete applications before July 1, 1992, whether or not a permit or certificate is issued before [~~the effective date of this regulation~~ July 1, 1993] .

2. Applicants for permits or certificates who submitted complete applications on or after July 1, 1992, where permits or certificates have been issued before [~~the effective date of this regulation~~ July 1, 1993] .

[~~3. Virginia Pollutant Discharge Elimination System permit holders who request minor modifications as specified in § 5.4 B of VR 680-14-01.~~

~~4. Virginia Pollution Abatement permit holders who request minor modifications as specified in § 5.4 C of VR 680-14-01.~~

~~5. Virginia Water Protection permit holders who request minor modifications as specified in § 4.4 of VR 680-15-02.~~

~~6. Surface Water Withdrawal permit or certificate holders who request minor modifications as specified in § 4.4 of VR 680-15-03.~~

~~7. Permit holders who request minor modifications of permits for the withdrawal of ground water issued pursuant to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.~~

3. Permit holders who request minor modifications of permits or certificates as defined in § 1.1 of this regulation.

4. Permit or certificate holders whose permits or certificates are modified at the initiative of the board.
]

PART II.
PAYMENT, DEPOSIT AND USE OF FEES.

§ 2.1. Due date.

A. Except as specified in § 2.1 B, all permit application fees are due on the day an application is submitted and must accompany the application. Applications will not be processed without payment of the required fee. No permit will be automatically continued without payment of the required fee.

B. Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued before the effective date of this regulation, will be assessed fees as specified in [~~§ 3.4~~ § 3.5] . Payment of the fee shall be made within 60 days of the applicant's notification by the board of the fee due. No permit will be issued without payment of the required fee.

§ 2.2. Method of payment.

Fees shall be paid by check, draft or postal money order payable to the Commonwealth of Virginia, State Water Control Board and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee.

§ 2.3. Incomplete payments.

All incomplete payments will be deemed nonpayments.

§ 2.4. Deposit and use of fees.

All fees collected pursuant to this regulation shall be deposited into the State Water Control Board Permit Program Fund established by, and used and accounted for as specified in § 62.1-44.15:7 of the Code of Virginia. Payment to the Departments of Conservation and Recreation and Game and Inland Fisheries for permit applications they are required under state law to review

will be made from this fund. Fees collected shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

PART III.
DETERMINATION OF FEE AMOUNT.

§ 3.1. General.

[~~A.~~] Each application for a new permit or certificate, each application for reissuance of a permit or certificate, each application for [major] modification of a permit or certificate, and each revocation and reissuance of a permit [or certificate] is a separate action and shall be assessed a separate fee. The fees for each type of permit or certificate which the board has the authority to issue, reissue or modify will be as specified in this part.

[~~B. Fees for modifications requested by the permit or certificate holder will be prorated based on the number of years from the date of application until the permit expires. The annual prorated amount is equal to the fee for issuance or reissuance as shown in § 3.2 divided by the total term of the permit as indicated in the permit at issuance. The modification fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the date of application until the permit expires.~~

~~C. Fees for modifications initiated by the board will be prorated based on the number of years from the date of application until the permit expires. The annual prorated amount is equal to the fee for modifications initiated by the board, which is 75% of the fee for issuance or reissuance, as shown in § 3.3 divided by the total term of the permit as indicated in the permit at issuance. The modification fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the date of application until the permit expires.~~

~~D. In no case will the total fees charged for modifications initiated by the board over the life of the permit or certificate be greater than the cost for issuance of a new permit or certificate or reissuance of an existing permit or certificate as specified in § 3.2.~~]

§ 3.2. Fee schedules for [individual] new permit issuance [; and individual] existing permit reissuance [~~and for calculation of the fee for permit or certificate modification requested by the permit or certificate holder~~] .

The following fee schedules apply to applications for issuance of a new [individual] permit or certificate and reissuance of an existing [individual] permit or certificate. [~~The amount of the fee for a modification requested by the permit or certificate holder shall be determined as specified in § 3.1 B utilizing the schedules in this section~~].

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major $8,000

VPDES Municipal Major $7,100

[VPDES Municipal Stormwater ..... $7,100]

VPDES Industrial Minor/No Standard Limits . $3,400

VPDES Industrial Minor/Standard Limits $2,200

[VPDES Industrial Stormwater ..... $2,400]

VPDES Municipal Minor/100,000 GPD or More $2,500

VPDES Municipal Minor/More Than 10,000 GPD Less Than 100,000 GPD $2,000

VPDES Municipal Minor/ [More than 1,000 GPD 10,000 GPD or Less $1,800

[VPDES Municipal Minor/1,000 GPD or less . $1,400]

[~~VPDES General~~ ..... ~~$ 200~~]

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation .....[~~$1,000~~ (Reserved)]

VPA Intensified Animal Feeding Operation .[~~$ 500~~ (Reserved)]

VPA Industrial Wastewater Operation $3,500

VPA Industrial Sludge Operation $2,500

VPA Municipal Wastewater Operation $4,500

VPA Municipal Sludge Operation $2,500

[~~VPA General Permits and any~~ All] other [~~operation~~ operations] not specified above ....$ 250

3. Virginia Water Protection (VWP) permits.

VWP Category I Project $3,000

VWP Category II Project $2,100

VWP Category III Project ..... [~~$ 900~~ $ 800]

[~~VWP General~~ ..... ~~$ 400~~]

VWP Waivers ..... $ 300

4. Surface Water Withdrawal (SWW) permits or certificates issued pursuant to Chapter 24 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month ....[*$ ~~250~~ (Reserved)*]

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month .....[*$ ~~400~~ (Reserved)*]

Agricultural withdrawal of 300 million gallons or greater in any single month ....[*$ ~~600~~ (Reserved)*]

[*Certificate for an Existing*] *Nonagricultural Withdrawal* .....[*~~$4,000~~ $2,000*]

[*Permit for a New or Expanded Nonagricultural Withdrawal* ..... *$3,000*]

5. Permits for the withdrawal of ground water issued pursuant to Chapter 25 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month ....[*$ ~~250~~ (Reserved)*]

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month .....[*$ ~~400~~ (Reserved)*]

Agricultural withdrawal of 300 million gallons or greater in any single month ....[*$ ~~600~~ (Reserved)*]

[*Initial Permit for an Existing Nonagricultural Withdrawal* ..... *$ 400*]

[*Permit for a New or Expanded*] *Nonagricultural Withdrawal* *$2,000*

[*§ ~~3.3. Fee schedules for calculation of the fee for permit or certificate modification of permits or certificates initiated by the board.~~*

~~The amount of the fee for a modification initiated by the board shall be determined as specified in § 3.1 C utilizing the schedules in this section.~~

~~1. Virginia Pollutant Discharge Elimination System (VPDES) permits.~~

~~VPDES Industrial Major~~ .....~~$6,000~~*

~~VPDES Municipal Major~~ .....~~$5,325~~*

~~VPDES Industrial Minor/No Standard Limits $2,550~~

~~VPDES Industrial Minor/Standard Limits~~ ....~~$1,650~~*

~~VPDES Municipal Minor/100,000 GPD or More~~ .....~~$1,875~~*

~~VPDES Municipal Minor/More Than 10,000 GPD Less Than 100,000 GPD~~ .....~~$1,500~~*

~~VPDES Municipal Minor/10,000 GPD or Less $1,350~~

~~VPDES General~~ .....~~$ 150~~*

~~2. Virginia Pollution Abatement (VPA) permits.~~ -

~~VPA Concentrated Animal Feeding Operation $ 750~~

~~VPA Intensified Animal Feeding Operation~~ ..~~$ 375~~*

~~VPA Industrial Wastewater Operation~~ .....~~$2,625~~*

~~VPA Industrial Sludge Operation~~ .....~~$1,875~~*

~~VPA Municipal Wastewater Operation~~ .....~~$3,375~~*

~~VPA Municipal Sludge Operation~~ .....~~$1,875~~*

~~VPA General Permits and any other operation not specified above~~ .....~~$ 187~~*

~~3. Virginia Water Protection (VWP) permits.~~ -

~~VWP Category I Project~~ .....~~$2,250~~*

~~VWP Category II Project $1,575~~

~~VWP Category III Project~~ .....~~$ 675~~*

~~VWP General~~ .....~~$ 300~~*

~~VWP Waivers~~ .....~~$ 225~~*

~~4. Surface Water Withdrawal (SWW) permits or certificates issued pursuant to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.~~ -

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~ .....~~$ 187~~*

~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~ .....~~$ 300~~*

~~Agricultural withdrawal of 300 million gallons or greater in any single month~~ .....~~$ 450~~*

~~Nonagricultural withdrawal~~ .....~~$3,000~~*

~~5. Permits for the withdrawal of ground water issued pursuant to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.~~ -

~~Agricultural withdrawal not exceeding 150 million gallons in any single month~~ .....~~$ 187~~*

~~Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month~~ .....~~$ 300~~*

~~Agricultural withdrawal of 300 million gallons or~~

~~*greater in any single month* .....$ 450~~

~~*Nonagricultural withdrawal* .....$1,500~~

§ 3.3 Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder.

1. Virginia Pollutant Discharge Elimination System (VPDES) permits.

VPDES Industrial Major $4,000

VPDES Municipal Major $3,550

VPDES Municipal Stormwater $3,550

VPDES Iducstrial Minor/No Standard Limits .$1,700

VPDES Industrial Minor/Standard Limits $1,100

VPDES Industrial Stormwater $1,200

VPDES Municipal Minor/100,000 GPD or More $1,250

VPDES Municipal Minor/More Than 10,000 GPD–Less Than 100,000 GPD $1,000

VPDES Municipal Minor/More Than 1,000 GPD–10,000 GPD or Less .....$ 900

VPDES Municipal Minor/1,000 GPD or Less ..$ 700

2. Virginia Pollution Abatement (VPA) permits.

VPA Concentrated Animal Feeding Operation ..... (Reserved)

VPA Intensified Animal Feeding Operation ..... (Reserved)

VPA Industrial Wastewater Operation $1,750

VPA Industrial Sludge Operation $1.250

VPA Municipal Wastewater Operation $2,250

VPA Municipal Sludge Operation $1,250

All other operations not specified above .....$ 125

3. Virginia Water Protection (VWP) permits.

VWP Category I Project $1,500

VWP Category II Project $1,050

VWP Category III Project .....$ 400

VWP Waivers .....$ 150

4. Surface Water Withdrawal (SWW) permits or certificates issued pursuant to Chapter 24 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month .....(Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month .....(Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month .....(Reserved)

Certificate for an Existing Nonagricultural Withdrawal $1,000

Permit for a New or Expanded Nonagricultural Withdrawal $1,500

5. Permits for the withdrawal of ground water issued pursuant to Chapter 25 of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month .....(Reserved)

Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month .....(Reserved)

Agricultural withdrawal of 300 million gallons or greater in any single month .....(Reserved)

Initial Permit for an Existing Nonagricultural Withdrawal .....$ 200

Permit for a New or Expanded Nonagricultural Withdrawal $1,000

§ 3.4. Fees for filing registration statements for general permits issued by the board.

A. The fee for filing a registration statement for coverage under VR 680-14-09 is $ 0.

B. The fee for filing a registration statement for coverage under VR 680-14-11 is $ 0.

C. Except as specified in §§ 3.4 A and 3.4 B, the maximum fee for filing a registration statement for coverage under any general permit issued by the board shall be $200. Fees for coverage under general permits will be based on the number of years from the filing of a registration statment until the general permit expires. The annual prorated amount is equal to the maximum fee of $200 divided by the total term of the general permit. The

fee is the annual prorated amount multiplied by the number of years rounded to the nearest whole year from the filing of a registration statment until the expiration of the general permit.]

[*§ ~~3.4.~~ § 3.5. Fee assessment.*]

Applicants that submitted applications on or after July 1, 1992, where a permit or certificate has not been issued as of [~~*the effective date of this regulation*~~ *July 1, 1993*] , *shall be assessed the applicable fee as specified in §* [*§ ~~3.1,~~*] *3.2* [~~*or*~~ ,] *§ 3.3* [*or § 3.4*] , *as appropriate, except that where a public notice has been published before* [~~*the effective date of this regulation*~~ *July 1, 1993*] , *the fee shall be 50% of the fee specified in §* [*§ ~~3.1,~~*] *3.2* [~~*or*~~ ,] *§ 3.3* [*or § 3.4*] .

PART IV.
[~~*MISCELLANEOUS.*~~ *DELEGATION OF AUTHORITY.*]

§ 4.1. Delegation of authority.

The [~~*executive*~~] *director, or his designee, may perform any action of the* [*State Water Control*] *Board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.*

* * * * * * * *

Title of Regulation: **VR 680-14-13. Aboveground Storage Tanks Pollution Prevention Requirements.**

Statutory Authority: §§ 62.1-44.34:15.1 and 62.1-44.15(10) of the Code of Virginia.

Effective Date: June 30, 1993.

Summary:

In accordance with § 62.1-44.34:15.1 of the Code of Virginia, the State Water Control Board has adopted regulations requiring all operators of facilities in the Commonwealth of Virginia having an aggregate aboveground storage capacity of 25,000 gallons or more of oil to comply with standards and procedures relating to the prevention of pollution from aboveground storage tanks.

This regulation establishes the standards and procedures necessary to be followed by facility operators to prevent the discharge of oil to state waters, lands and storm drain systems from new and existing aboveground storage tanks. These standards and procedures were required to be developed in substantial conformity with the current codes and standards recommended by the National Fire Protection Association. Section 62.1-44.34:15.1 also requires the board to incorporate accepted industry practices contained in the American Petroleum Insititute publications and other accepted industry standards. The board conducted an extensive review of existing industry practices relating to aboveground storage tanks.

Based on the public comments received numerous revisons to the proposed regulation were made. The majority of comments referenced five parts of the proposed regulations and resulted in changes in § 6 relative to the requirement for inventory control, for an initial internal inspection of an aboveground storage tank that has been in operation more than five years, for secondary containment dike/berm, and for hydrostatic testing of piping; and to Appendix II. Comments were also submitted on other sections of the regulation seeking clarification and format changes to the proposal. Those comments were reviewed by staff and utilized when appropriate.

VR 680-14-13. Aboveground Storage Tanks Pollution Prevention Requirements.

§ 1. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979.

[~~*"Board" means the State Water Control Board.*~~]

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

[*"Department" means the Department of Environmental Quality.*]

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code [*(USBC)*] .

"Local director of emergency services" means any person or any coordinator appointed pursuant to § 44-146.19 of the Code of Virginia.

"Oil" means oil of any kind and in any form including,

but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. [*For the purpose of this regulation only, this definition does not include dredge spoils.*]

"Operator" means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or [~~a~~] *vessel.*

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit or agency thereof.

"Pipeline" means all new and existing pipe, [~~rights of way~~ *rights-of-way*] *, and any equipment, facility, or building used in the transportation of oil including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.*

"Storage capacity" means the total capacity of an AST or a container, whether the AST or container is filled in whole or in part with oil or a mixture of oil or other substances, or is empty. This term does not include the capacity of any AST which has been permanently closed in accordance with this regulation.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such [~~a~~ *as*] *concrete, steel or plastic, which provide structural support. This term does not include flow-through process equipment used in processing or treating oil by physical, biological or chemical means.*

"Tank vessel" means any vessel used in the transporation of oil as cargo.

"Uniform Statewide Building Code" [*or "USBC"*] *means § 36-99 et seq. of the Code of Virginia.*

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

[*"VR 680-14-12" means the Facility and Aboveground Storage Tank Registration Requirements.*]

§ 2. Applicability.

[*A.*] *This regulation applies to* [~~aboveground storage tanks at facilities with an aggregate capacity of 25,000 gallons of oil or more.~~ *(i) a facility located within the Commonwealth with an aggregate aboveground storage capacity of more than 25,000 gallons of oil, or (ii) any individual AST located within the Commonwealth with a storage capacity of more than 25,000 gallons of oil, unless otherwise specified within this regulation.*

B. The requirements of this regulation do not apply to:

1. Vessels or vehicles;

2. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60o#F and 14.7 pounds per square inch absolute) subject to and specifically listed or designated as hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601);

3. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the Clean Water Act;

4. An AST which is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 of Title 45.1 of the Code of Virginia;

5. An AST used for the storage of products which are regulated pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301, et seq.);

6. An AST which is used to store hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act (42 U.S.C. § 6901, et seq.) or a mixture of such hazardous wastes and other regulated substances;

7. An AST which is used to store propane gas;

8. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

9. A nonstationary AST liquid trap or associated gathering lines directly related to oil and gas production or gathering;

10. A surface impoundment, pit, pond or lagoon;

11. A stormwater or wastewater collection system;

12. Equipment or machinery that contains oil for operational purposes;

13. A farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

14. A tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

15. An AST with a storage capacity of 660 gallons or less of oil unless otherwise specified in this regulation; or

16. ASTs used to contain oil for less than 120 days and only in connection with activities related to the containment and clean up of oil or to any vessel engaged only in activities within state waters related to the containment and clean up of oil, including response related training or drills.]

§ 3. Compliance dates.

Operators of facilities with an aggregate aboveground storage capacity of [*more than*] *25,000 gallons* [~~*or more*~~] *of oil shall comply with this regulation* [~~*30*~~ *within 120*] *days after* [~~*publication in the Virginia Register*~~ *the effective date of this regulation*] *unless otherwise specified in this regulation.* [*Operators of facilities which will be required to upgrade the existing facility design to comply with this regulation shall submit a compliance schedule to the department within 90 days after the effective date of this regulation.*]

§ 4. Statement of purpose.

The purpose of this regulation is to develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of [*more than*] *25,000 gallons* [~~*or more*~~] *of oil relating to the prevention of pollution from aboveground storage tanks.*

§ 5. Incorporation by reference.

[*A.*] *The following versions of standards and recommended practices, codes and federal regulations are hereby incorporated by reference:*

1. Underwriters Laboratories Standards. Specification 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids" (1982).

2. American Petroleum Institute Standards.

a. Specification Number 12B and Supplement 2, October 1, 1990, "Specification for Bolted Tanks for Storage of Production Liquids," Thirteenth Edition.

b. Specification Number 12D and Supplement 2, 1982, as supplemented 1985, "Specification for Field Welded for Storage of Production Liquids," Ninth Edition.

c. Specification Number 12F, and Supplement 1, 1982, as supplemented 1988, "Specification for Shop Welded Tanks for Storage of Production Liquids," Tenth Edition.

d. Standard Number 620, 1985, "Design and Construction of Large [,] *Welded* [,] *Low-Pressure Storage Tanks," Eighth Edition.*

e. Standard Number 650, 1988, "Welded Steel Tanks for Oil Storage," Eighth Edition [, *Appendices G and I*] .

f. Recommended Practice 651, April 1991, "Cathodic Protection of Aboveground Petroleum Storage Tanks," First Edition.

g. Recommended Practice 652, April 1991, "Lining of Aboveground [*Petroleum*] *Storage Tank Bottoms," First Edition.*

h. Standard 653, January 1991, "Tank Inspection, Repair, Alteration, and Reconstruction," First Edition, incorporates supplement 1, January 1992.

[~~*i. Publication 1110, "Recommended Practice for the Pressure Testing of Liquid Petroleum Pipelines."*~~]

[~~*j.*~~ *i.*] *Recommended Practice 1632, 1987 as supplemented March 1989, "Cathodic Protection of Underground Storage Tanks and Piping Systems."*

[~~*k.*~~ *j.*] *Recommended Practice 2350, March 1987, "Overfill Protection for Petroleum Storage Tanks."*

[*k. Standard 2000, "Venting Atomospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated)."*]

3. National Fire Protection Association Standards.

[*a.*] *NFPA 30, "Flammable and Combustible Liquids Code."*

[*b. NFPA 70, "National Electrical Code."*]

4. National Association of Corrosion Engineers Standards.

a. Recommended Practice 0169-83, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems," 1983.

b. Recommended Practice 0285-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," 1985.

5. 33 C.F.R. Part 154 [, *Oil Pollution Prevention Regulations for Marine Oil Transfer Facilities*] .

6. 40 C.F.R. Part 112 [, *Oil Pollution Prevention*] .

7. 29 C.F.R. Part 1910.106 [, *Flammable and Combustible Liquids*] .

[*B. Industry specifications, standards, and codes, to the extent specified in the text of this regulation, are adopted and by reference are incorporated into and shall form a*

part of the regulations as limited, modified, or replaced by specific requirements stated otherwise and approved by the department.

C. The current issue of the industry specification, standard, or code, including addenda or changes, described in the regulation as adopted by reference, shall be used unless circumstances warrant the use of an earlier or later date and specifically authorized by the department.]

§ 6. Pollution prevention standards and procedures.

A. For existing aboveground storage tanks at [~~*facilities*~~ *a facility*] *with an aggregate* [*storage*] *capacity of 1 million gallons* [*of oil*] *or greater* [*or an existing individual aboveground storage tank with a storage capacity of 1 million gallons of oil or greater*] *the following requirements apply* [*unless previously exempted in this regulation*] *:*

1. Inventory control, testing for variations and formal tank tests. [*An AST with a storage capacity of less than 12,000 gallons shall not be subject to the reinspection requirement unless circumstances warrant and deem a reinspection necessary by the department.*]

a. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of [~~*1/10*~~ *1/2*] *of 1.0% of the* [~~*facility aggregate aboveground*~~] *storage capacity of* [~~*oil or the facility total monthly throughput of oil whichever is less*~~ *each individual AST*] . [~~*Inventories shall be reconciled on a monthly basis. If the reconciliation of inventory indicates a greater than 1/10 of 1.0% variation within two consecutive reconciliation periods.*~~ *For a refinery, a significant variation of inventory shall be considered a loss in excess of 1/2 of 1.0% by weight of the difference between the refinery's input and output. Reconciliations shall be conducted monthly. If the significant variation persists for two consecutive reconciliation periods the operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the source of the inventory variation,*] *the operator shall notify the* [~~*board*~~ *department*] *and the local director or coordinator of emergency services and* [~~*initiate*~~ *conduct additional*] *testing to determine the reason for the variation. The method* [~~*of testing*~~ *testing*] *and schedule and results*] *shall be submitted to the [* ~~*board*~~ *department*] *for review* [~~*and approval*~~] . *Inventories shall also be reconciled after each* [*pipeline/tank vessel*] *receipt or transfer of oil* [*and the investigating procedures, and requirements of reporting variances in reconciliations described above shall be followed*] .

b. Inventory records shall be kept of incoming and outgoing volumes of oil and oil movements within the facility. All tanks shall be gauged on a daily basis during each day of normal operation and [~~*tanks shall be gauged*~~] *after each* [*pipeline/tank vessel receipt or*] *transfer of oil. Physical measurements shall be reconciled to 60°F* [*and 14.7 pounds per square inch absolute*] .

c. All AST's shall be formally inspected on the following basis:

(1) Each AST shall undergo a formal external tank inspection every five years using [*industry*] *accepted methods of nondestructive testing* [*or method approved by the department*] *in accordance with the provisions of API 653* [*or accepted industry standard and test procedure approved by department*] . *The initial external inspection shall be completed within* [~~*three*~~ *five*] *years* [~~*of*~~ *after*] *the effective date of this regulation. The operator of each facility shall submit to the* [~~*board*~~ *department*] *for approval, within six months* [~~*of*~~ *after*] *the effective date of this regulation, a schedule of* [*external*] *tank inspections for all tanks* [~~*on*~~ *at*] *the facility.* [~~*This formal inspection shall also include a determination by the operator that the tank bottom is not leaking. The operator shall submit documentation of the method(s) that will be used to make this determination to the board for approval six months prior to its application.*~~]

(2) Each existing AST that has been in operation for more than five years shall be internally inspected within three years [~~*of*~~ *after*] *the effective date of this regulation.* [*The operator of the AST may request an extension of time for the formal internal inspection. If supporting documentation is submitted demonstrating that compliance with this section is not feasible and deemed acceptable by the department, an extension of time may be granted by the department not greater than 24 months.*] *An internal inspection conducted on or after January 1, 1991, in accordance with the provisions of API 653 may satisfy this requirement based upon review and acceptance by the* [~~*board*~~ *department*] *of supporting documentation submitted by the operator. Inspections shall be conducted in accordance with the provisions of API 653* [*or procedure approved by the department*] *and shall include formal inspection of the entire tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing* [*or procedure approved by the department*] *shall be allowed in lieu of the internal inspection.* [*An AST with a release prevention barrier installed shall be internally inspected in accordance with the*

provision of API 653 or procedure accepted by the department.] *The operator of each facility shall submit to the* [~~*board for approval*~~ *department*] , *within six months of the effective date of this regulation, a schedule of tank inspections for all tanks* [~~*on*~~ *at*] *the facility* [*applicable to this regulation. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the department*] .

(3) Each existing AST that has been in operation for less than five years shall be internally inspected within five years of the effective date of this regulation. Inspections shall be conducted in accordance with the provisions of API 653 [*or procedure accepted by the department*] *and shall include formal inspection of the entire tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing* [*or method accepted by the department*] *may be allowed in lieu of the internal inspection.* [*An AST with a release prevention barrier installed shall be internally inspected in accordance with the provisions of API 653 or method accepted by the department.*] *The operator of each facility shall submit to the* [~~*board for approval*~~ *department*] , *within six months* [~~*of*~~ *after*] *the effective date of this regulation, a schedule of tank* [*internal*] *inspections for all tanks* [~~*on*~~ *at*] *the facility* [*applicable to this regulation. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the department.*] .

(4) Each AST shall undergo an internal reinspection every 10 years after the inspection required in subdivisions A 1 c(2) and A 1 c(3) of this section unless the operator can demonstrate to the [~~*board*~~ *department*] *that an extension of the reinspection period is warranted. Such demonstration shall be provided to the* [~~*board*~~ *department*] *for approval at least six months prior to the date reinspection is due.* [*This internal reinspection may be required sooner than 10 years if there is an indication of an increased corrosion rate that was established from the initial internal inspection.*] *Inspections shall be conducted in accordance with the provisions of API 653* [*or procedures approved by the department*] *and shall include formal inspection of the entire tank bottom. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing* [*or other mehtod approved by the department*] *may be allowed in lieu of the internal reinspection.* [*An AST with a release prevention barrier installed shall be reinspected in accordance with provisions of API 653 or other procedure approved by the department.*] *The operator of each facility shall submit a schedule* [*to the department*] *indicating which tanks are to be reinspected three months prior to the scheduled tests.* [*An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemeed necessary by the department.*]

(5) Each secondary containment dike or berm shall be [~~*recertified every 10 years*~~ *evaluated or certified*] *by a professional engineer* [: ~~*This certification shall attest to the dike or berm having maintained*~~ *or person approved by the department with respect to*] *compliance with 40 C.F.R. Part 112, NFPA 30 and 29 C.F.R. Part 1910.106* [: ~~*This certification shall also include a statement of the degree of permeability of the entire dike or berm including the floor. This permeability shall be not less than 10-6 cm/sec. The initial certification shall be completed*~~] *within five years of the effective date of this regulation* [*and every 10 years thereafter*] .

(6) Each existing AST that has been in operation for more than five years without cathodic protection of the tank [~~*bottom*~~] *shall be evaluated in accordance with the provisions of API 651, API 653, NACE 0169 and NACE 0285* [*or procedure approved by the department*] *to determine the need for cathodic protection. This evaluation shall be* [~~*accomplished*~~ *performed*] *by a corrosion professional and shall be conducted within five years of the effective date of this regulation.* [*This evaluation shall not be required if AST construction design allows external access to the tank bottom, unless deemed necessary by the department.*]

2. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill and shutdown procedures [~~*which*~~ *that*] *will ensure* [~~*that*~~] *overfilling of tanks does not occur.* [*All receipts of oil shall be authorized by facility personnel trained by the operator.*] *The operator must ensure* [~~*that*~~] *the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences* [~~*and that*~~] . [*The operator must also ensure*] *the transfer operation is monitored* [~~*constantly*~~ *continually, either by manual or automatic means,*] *until complete. Each operator shall also ensure that all tank fill valves not in use are secured. The operator shall* [~~*also monitor all other storage tanks to*~~] *ensure that only the tank designated is receiving oil.*

b. Each operator of a facility shall ensure compliance with NFPA 30 [*provisions*] .

c. [~~All receipts of oil shall be authorized by facility personnel trained by the operator.~~] All oil transfer areas where [~~tank~~] filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting any spills that may occur. [~~The operator shall ensure compliance with NFPA 30 relating to this requirement. The secondary automatic shutoff control required by NFPA 30, Chapter 5, sections 5-4.4.1.10 and 5-4.4.1.11 shall be tested prior to the loading of each tank vehicle.~~ A tank vehicle loading rack must have an automatic shutdown system easily accessible at each loading point. THis shutdown system must be tested weekly and records of testing maintained at the facility.] The tank vehicle operator shall remain at the loading rack during all phases of any transfer operation. [All transfer areas must have collision barriers to protect piping where vehicle or equipment impact may occur.]

[d. Tank vehicles shall be equipped with brake interlock and secondary automatic shutoff control as required by NFPA 30, Chapter 5, §§ 5-4.41.10 and 5-4.41.11 or method approved by the department. The brake interlock and secondary automatic shutoff control of each vehicle using the loading rack shall be tested monthly and records of testing maintained at the facility.]

[~~d.~~ e.] If installed, an automatic shutdown system utilized during transfer of oil shall include the capability of directing the flow of oil to another tank capable of receiving the transferred oil or [~~in the case of transfers from a vehicle, it shall provide for the shutdown of~~ shutting down] the pumping [or transfer] system. This automatic shutdown system shall be tested prior to each receipt of oil or [~~monthly~~ every two weeks] whichever occurs first [~~every two weeks~~ and records of testing shall be maintained at the facility] .

[~~e.~~ f.] All AST's shall be equipped with a [~~liquid level~~] gauge that indicates the level of oil [or quantity of oil] in the tank. In addition, the storage capacity and tank identification number must be clearly marked on the tank and at the location of the gauge. These gauges shall be calibrated annually.

[~~f.~~ g. ~~Each AST shall be equipped~~ If unattended during transfer operations, the AST shall be equipped] with a high level alarm. Activation of the high level alarm shall initiate an immediate and orderly emergency shutdown of the transfer. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator [,] both by sight and hearing [,] of an impending overfill situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal on the control panel to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil or [~~monthly~~ every two weeks] whichever occurs first [and records of testing shall be maintained at the facility] .

3. Cathodic protection of piping and pressure testing of piping.

a. The requirement for cathodic protection of piping shall apply to buried piping only. Aboveground piping shall be protected from corrosion using methods and procedures referenced in NFPA 30 [or procedure approved by the department] . Cathodic protection shall be installed and maintained in accordance with [~~the provisions of~~ one of the following publications:] API 1632, NFPA 30, NACE 01-69 or NACE 02-85. Piping which passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion using practices recommended in the above listed publications.

b. All piping shall be hydrostatically tested within five years of the effective date of this regulation and every five years thereafter. [~~Tests conducted in accordance with the provisions of API 1110 may be used to satisfy this requirement.~~] The use of oil as a hydrostatic test medium is acceptable if the flash point is greater than 120°F [and 14.7 pounds per square inch absolute] . The [~~board~~ department] will consider alternatives to the hydrostatic test requirement [for aboveground piping] based on site specific conditions. The operator shall submit any proposal regarding alternative method(s) to the [~~boardfor approval~~ department] six months prior to [~~their~~ its] application.

4. Visual daily inspection, weekly inspection, monthly gauging and inspection of monitoring wells, monitoring of well head space and quarterly sampling and analysis of monitoring wells.

a. The operator or his representative shall conduct a daily visual inspection of the facility each day of normal operation. Upon completion of this inspection, the facility person conducting the inspection shall document completion of this inspection by making an appropriate notation in the facility records and shall sign this notation. This visual inspection shall include the following:

(1) A complete walkthrough of the facility property to ensure that no hazardous conditions exist.

(2) An inspection of ground surface for signs of leakage, spillage or stained or discolored soils.

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured.

(4) A visual inspection of the exterior tank shell to look for signs of leakage or damage.

b. The operator or his representative shall conduct a weekly inspection of the facility using a checklist [~~*submitted to and approved by the board*~~ *developed in accordance with department guidance*] . [~~*Board*~~ *Department*] *guidance as to content of this checklist is available in Appendix I.* [*The checklist in Appendix I is not intended to be all inclusive of safety or maintenance procedures but as guidance to the requirements within this regulation.*] *The operator shall* [~~*submit*~~ *develop*] *the* [~~*facility*~~] *checklist* [~~*to the board for approval*~~] *within 90 days of the effective date of this regulation.* [*The weekly checklist shall be maintained at the facility and provided to the department upon request.*] *This checklist shall be signed and dated by the facility person(s) conducting the inspection and shall become part of the facility record.*

c. All monitoring wells required by VR 680-14-07, Oil Discharge Contingency Plans and Administrative Fees for Approval, shall be gauged monthly. The wellhead space of each well shall be sampled [~~*monthly*~~] *for the presence of petroleum vapors. The* [~~*board*~~ *department*] *developed guidelines for this procedure are found in Appendix II.*

d. All monitoring wells required by VR 680-14-07, Oil Discharge Contingency Plans and Administrative Fees for Approval, shall be sampled and analyzed to determine the presence of petroleum or petroleum by- product contamination. The [~~*board*~~ *department*] *developed guidelines for this procedure are found in Appendix II.*

e. All observations and data gathered as a result of subdivisions A 4 c and A 4 d of this section shall be maintained at the facility, compiled into a summary and submitted to the [~~*board*~~ *department*] *annually. Appendix II provides guidance as to the proper form for submittal. Should any such observations or data indicate the presence of petroleum hydrocarbons in ground water, the results shall be immediately reported to the* [~~*board*~~ *department*] *and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.*

5. To ensure proper training of individuals conducting inspections required by subdivision A 4 of this section, the operator of a facility shall certify personnel based on the following:

a. Each facility operator must establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility and shall document completion of this training in the facility records. The required training may be conducted by the operator or by a third party. The training program shall be [~~*submitted to the board for approval*~~ *established*] *within six months of the effective date of this regulation* [*and maintained at the facility*] .

b. The required training shall be conducted for facility personnel within 12 months of the effective date of this regulation. Personnel not receiving this training initially who will be conducting these inspections shall receive the training prior to conducting any inspection.

c. Initial training shall address at a minimum:

(1) Basic information regarding [*occupation safety,*] *hazard recognition, personnel protection and facility operations.*

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections.

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard [~~*as a result of improper facility operations*~~] .

(4) The procedure for evaluating the condition of [*the*] *aboveground storage tanks.*

d. The operator of a facility shall recertify facility personnel upon any changes to the contents of the initial training program or every [~~*two*~~ *three*] *years and shall make this recertification action part of the facility records.*

e. All formal inspections and testing required by subdivision A 1 c of this section shall be conducted by a person certified [~~*or licensed*~~] *to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API 650 and API 653* [*or procedure approved by the department*] . *Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by subdivision A 1 c of this section shall be maintained at the facility or at a location approved by the* [~~*board*~~ *department*] *for the life of the facility.*

B. For existing aboveground storage tanks at facilities with an aggregate capacity of less than 1 million gallons but more than 25,000 gallons, the following requirements shall apply:

1. Inventory control and testing for significant variations.

a. Each operator shall institute inventory control

procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of [~~1/10~~ 3/4] of 1.0% of the [~~facility~~ ~~aggregate~~ ~~aboveground~~] storage capacity of [~~oil or the facility~~ ~~total monthly throughput~~ ~~of oil whichever~~ ~~is less~~ an individual AST] . [Reconciliations shall be conducted monthly. If the significant variation persists for two consecutive reconciliation periods the operator shall conduct an investigation to determine the cause of the variation. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the source of the inventory variation, the operator shall notify the department and the local director or coodinator of emergency services and conduct additional testing to determine the reason for the variation. The testing method and schedule shall be submitted to the department for review and approval.] Inventories shall be reconciled [~~on a monthly basis~~ after each pipeline/tank vessel receipt or transfer of oil] . [~~If the reconciliation of inventory indicates a greater than 1/10 of 1.0% variation within two consecutive reconciliation periods, the operator shall notify the board and the local director or coordinator of emergency services and initiate testing to determine the reason for the variation. The method of testing shall be submitted to the board for review and approval. Inventories shall also be reconciled after each receipt or transfer of oil.~~]

b. Inventory records shall be kept of incoming and outgoing volumes of oil and oil movements within the facility. All tanks shall be gauged on a daily basis during each day of normal operation and [~~tanks shall be gauged after each transfer of oil~~ after each pipeline/tank vessel receipt or transfer of oil] . Physical measurements shall be reconciled to 60°F [and 14.7 pounds per square inch absolute] .

c. Each secondary containment dike or berm shall be [~~recertified every 10 years~~ evaluated] by a professional engineer [: ~~This certification shall attest to the dike or berm having maintained~~ or person approved by the department with respect to] compliance with 40 C.F.R. Part 112, NFPA 30 and 29 C.F.R. Part 1910.106 [: ~~This certification shall also include a statement of the degree of permeability of the entire dike or berm including the floor. This permeability shall be not less than 10-6 cm/sec. The initial certification shall be completed~~] within five years of the effective date of this regulation [and every 10 years thereafter.]

[d. Each existing AST that has been in operaton for more than five years without cathodic protection of the tanks shall be evaluated in accordance with the provisions of API 651, API 653, NACE 0169 and NACE 0285 or procedure approved the department to determine the need for cathodic protection. This evaluation shall be performed by a corrosion professional and shall be conducted within five years of the effective date of this regulation. This evaluation shall not be required if AST construction design allows external access to the tank bottom, unless deemed necessary by the department.]

2. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill and shutdown procedures [~~which~~ that] will ensure [~~that~~] overfilling of tanks does not occur. [All receipts of oil shall be authorized by facility personnel trained by the operator.] The operator must ensure [~~that~~] the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences [~~and that~~ . The operator must also ensure] the transfer operation is monitored [~~constantly~~ continually, either by manual or automatic means,] until complete. Each operator shall also ensure that all tank fill valves not in use are secured. The operator shall [~~also monitor all other storage tanks to~~] ensure that only the tank designated is receiving oil.

b. Each operator shall ensure compliance with the provisions of NFPA 30 [relating to safe fill and shutdown procedures] .

c. [~~All receipts of oil shall be authorized by facility personnel trained by the operator.~~] All oil transfer areas where [~~tank~~] filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting any spills that may occur. [~~The operator shall ensure compliance with NFPA 30 relating to this requirement. The secondary automatic shutoff control required by NFPA 30, Chapter 5, sections 5-4.4.1.10 and 5-4.4.1.11 shall be tested prior to the loading of each tank vehicle.~~ A tank vehicle loading rack must have an automatic shutdown system easily accessible at each loading point. This shutdown system must be tested weekly and records of testing maintained at the facility.] The tank vehicle operator shall remain at the loading rack during all phases of any transfer operation. [All transfer areas must have collision barriers to protect piping where vehicle or equipment impact may occur.]

[~~d. If installed by the operator, an automatic shutdown system utilized during receipt of oil shall include the capability of directing the flow of oil to another tank capable of receiving the transferred oil. This automatic shutdown system shall be tested prior to each receipt of oil or monthly whichever occurs first.~~ Tank vehicles shall be equipped with brake interlock and secondary automatic shutoff

control as required by NFPA 30, Chapter 5, §§ 5-4.41.10 and 5-4.41.11 or method approved by the department. The brake interlock and secondary automatic shutoff control of each vehicle using the loading rack shall be tested monthly and records of testing maintained at the facility.

e. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability of directing the flow of oil to another tank capable of receiving the transferred oil or shutting down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil or every two weeks whichever occurs first and records of testing shall be maintained at the facility.]

[~~e.~~ *f.*] *All AST's shall be equipped with a* [~~liquid level~~] *gauge that indicates the level of oil* [*or the quantity of oil*] *in the tank. In addition, the storage capacity and tank identification number must be clearly marked on the tank and at the location of the gauge. These gauges shall be calibrated annually.*

[~~f.~~ *g.*] *If* [~~an AST receiving oil is~~] *unattended during transfer operations,* [~~it~~ *the AST*] *shall be equipped with a high level alarm* [*, or other appropriate mechanism approved by the department to immediately alert the operator of an overfill event*] *. Activation of the high level alarm [or other appropriate mechanism*] *shall initiate an immediate and orderly emergency shutdown of the transfer. Each operator shall include this emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator* [*,] both by sight and hearing* [*,] of an impending overfill situation. If the operator is in a control station, this alarm shall cause a warning light and audible signal on the control panel to activate. In addition, this system shall alarm on failure, malfunction or power loss. This high level alarm shall be tested prior to each receipt of oil or* [~~monthly~~ *every two weeks or*] *whichever occurs first* [*and records of testing maintained at the facility*] *.*

3. Pressure testing of piping. All piping shall be hydrostatically tested within five years of the effective date of this regulation and every five years thereafter. [~~Tests conducted in accordance with the provisions of API 1110 may be used to satisfy this requirement.~~] *The use of oil as a hydrostatic test medium is acceptable if the flash point is greater than 120°F. The* [~~board~~ *department*] *will consider alternatives to the hydrostatic test requirement* [*for aboveground piping*] *based on site specific conditions. The operator shall submit any proposal regarding alternative method(s) to the* [~~board~~ *department*] *six months before* [~~their~~ *its*] *application. The piping tests required by this section shall be conducted by a person certified or licensed to conduct the inspection or test.*

4. Visual daily inspection and weekly inspections of the facility.

a. The operator or his representative shall conduct a daily visual inspection of the facility each day of normal operation. Upon completion of this inspection, the facility person conducting the inspection shall document completion of this inspection by making an appropriate notation in the facility records and shall sign this notation. This visual inspection shall include the following:

(1) A complete walkthrough of the facility property to ensure that no hazardous conditions exist.

(2) An inspection of ground surface for signs of leakage, spillage or stained or discolored soils.

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured.

(4) The procedure for evaluating the condition of aboveground storage tanks.

b. The operator or his representative shall conduct a weekly inspection of the facility using a checklist [~~submitted to and approved by the board~~ *developed in accordance with department guidance*] *.* [~~Board~~ *Department*] *guidance as to content of this checklist is available in Appendix I.* [*The checklist in Appendix I is not intended to be all inclusive of safety or maintenance procedures but as guidance to the requirements within this regulation.*] *The operator shall* [~~submit~~ *develop*] *the* [~~facility~~] *checklist* [~~to the board for approval~~] *within 90 days of the effective date of this regulation.* [*The weekly checklist shall be maintained at the facility and provided to the department upon request.*] *This checklist shall be signed and dated by the facility person(s) conducting the inspection and shall become part of the facility record.*

5. To ensure proper training of individuals conducting inspections required by subdivision B 4 of this section, the operator of a facility shall certify personnel based on the following:

a. Each facility operator must establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility and shall document completion of this training in the facility records. The required training may be conducted by the operator or by a third party. The training program shall be [~~submitted to the board~~

~~for approval~~ established] within six months of the effective date of this regulation.

b. The required training shall be conducted for facility personnel within 12 months of the effective date of this regulation. Personnel not receiving this training initially who will be conducting these inspections shall receive the training prior to conducting any inspection.

c. Initial training shall address at a minimum:

(1) Basic information regarding hazard recognition, personnel protection and facility operations.

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections.

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard [~~as a result of improper facility operations~~] .

(4) The procedure for evaluating the condition of [the] aboveground storage tanks.

d. The operator of a facility shall recertify facility personnel upon any changes to the contents of the initial training program or every [~~two~~ three] years and shall make this recertification action part of the facility records.

§ 7. Performance standards for aboveground storage tanks installed, retrofitted or brought into use.

A. All AST's brought into [~~service~~ use] after [~~the effective date of this regulation~~ June 30, 1993,] shall be built in accordance with design standards adopted by Underwriters Laboratories and the American Petroleum Institute. All newly installed AST's shall be installed in a manner consistent with the applicable requirements found in NFPA 30. Approval and any applicable permits must be obtained from the local building official before construction starts.

B. All AST's installed after [~~the effective date of this regulation~~ June 30, 1993,] must be strength tested before being placed in [~~service~~ use] in accordance with the applicable code or standard under which they were built. [~~The ASME code stamp, API monogram or the UL label on a tank is evidence of compliance with this strength test.~~]

C. AST's installed after [~~the effective date of this regulation~~ June 30, 1993,] which have the tank bottom in direct contact with the soil must have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, corrosion protection shall be provided.

D. AST's installed after [~~the effective date of this regulation~~ June 30, 1993,] shall have a release prevention barrier (RPB) installed either under or in the bottom of the tank. This RPB shall be capable of preventing the escape of contained materials and containing or channeling the released material for release detection.

E. Existing AST's which are retrofitted [(reconstruction or bottom replacement)] or brought back into use after [~~the effective date of this regulation~~ June 30, 1993,] shall be brought into compliance with all accepted [~~applicable~~] industry standards [~~which incorporate proven technologies to prevent the discharge of oil and which are cost effective~~ applicable to new tank construction including the installation of a RPB] . The operator of the facility shall submit a compliance schedule and documentation of the method of compliance to the [~~board~~ department] six months prior to its application.

F. Operators of AST's installed, retrofitted [(reconstruction or bottom replacement)] or brought back into use after [~~the effective date of this regulation~~ June 30, 1993,] shall [also] comply with § 6 A or § 6 B [,] whichever is applicable.

§ 8. Aboveground storage tank closure.

A. Prior to temporary closure, the operator of an AST shall obtain a permit and the inspection required in accordance with the provisions of the Uniform Statewide Building Code. No AST shall be deemed to be temporarily closed unless the AST is inspected in accordance with the provisions of the Uniform Statewide Building Code. Notice of intent to temporarily close an AST shall be made to the [~~board~~ department] in accordance with § 5 of [~~this regulation~~ VR 680-14-12] .

Where any AST has been temporarily closed for more than 12 months, the operator shall permanently close the AST unless the AST meets the standards established of a new AST established in VR 680-14-13, or the local building official permits an extension of the 12-month temporary closure period. The operator of the temporarily closed AST must complete the site assessment required by § [~~7~~ 8] C of this regulation prior to applying for an extension from the local building official.

B. Prior to permanent closure, the operator of an AST shall obtain a permit and the inspections required in accordance with the provisions of the Uniform Statewide Building Code. Notice of intent to permanently close an AST shall be made to the [~~board~~ department] in accordance with § 5 of [~~this regulation~~ VR 680-14-12] .

1. If the closure is in response to containment and cleanup actions that necessitate AST removal, the operator of the AST shall immediately notify the local building official and the [~~board~~ department] utilizing the form prescribed in Appendix I of [~~this regulation~~ VR 680-14-12] .

2. The assessment of the AST site required by this section shall be conducted by the operator after notifying the [~~board~~ department] and the local building official but prior to completion of permanent closure.

3. An AST, including an AST operated by the federal government, shall not be permanently closed unless the closure is approved by the local building official, except in the case of an AST operated by the Commonwealth. The Department of General Services shall function as the local building official in accordance with § 36-98.1 of the Code of Virginia for all ASTs operated by the Commonwealth.

C. Operators shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. Samples must be taken in accordance with established EPA analytical methods or other methods approved by the [~~board~~ department] . Depth to ground water must be considered when selecting the appropriate means of sampling.

1. The operator shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas and a site map indicating the location of the closed AST and associated piping as attachments to the registration form required by § [~~7~~ 5] B [of VR 680-14-12] .

2. If contaminated soils, contaminated ground water or free product as a liquid or vapor is discovered, operators shall immediately notify the [~~board~~ department] and conduct the cleanup in accordance with [~~board~~ department] requirements.

3. The [~~board~~ department] may consider modification of the requirements of this section if the operator of the AST can demonstrate to the [~~board's~~ department's] satisfaction that a previously installed leak detection system would have been sufficient to have detected a leak from the closed AST.

D. When deemed necessary by the [~~board,~~ department] the operator of an AST, which was permanently closed prior to [~~the effective date of this regulation~~ June 30, 1993] , shall assess the site and close the AST in accordance with the requirements of this regulation.

E. Operators shall maintain all records relating to compliance with this regulation for a period of five years from the date the [~~board~~ department] receives notice of the closure. These records shall be made available to the [~~board~~ department] at any time upon request.

§ 9. Record keeping and access to facilities.

A. Each operator of a facility subject to this regulation shall maintain the following records:

1. Books, papers, documents and records relating to all measurements and inventory of oil at the facility;

2. All information relating to tank/pipe testing;

3. All records relating to spill events and other discharges of oil from the facility;

4. All supporting documentation for developed contingency plans; and

5. Any records required to be kept by statute or regulation of the ~~board~~ department] .

B. These records shall be kept by the operator of a facility at the facility or at an alternate location approved by the [~~board~~ department] for a period of five years unless otherwise indicated.

C. Upon request, each operator shall make these records available to the [~~board~~ department] and to the director or coordinator of emergency services for the locality in which the facility is located or to any political subdivision within one mile of the facility.

§ 10. Notices to the [~~State Water Control Board~~ Department of Environmental Quality - Water Division] .

All written communications to the [~~State Water Control Board~~ Department of Environmental Quality - Water Division] related to the requirements of this regulation shall be addressed as follows:

Mailing Address:

[~~State Water Control Board~~ Department of Environmental Quality - Water Division]
Office of Spill Response and Remediation
P.O. Box 11143
Richmond, VA 23230-1143

Location Address:

[~~State Water Control Board~~ Department of Environmental Quality - Water Division]
Office of Spill Response and Remediation
4900 Cox Road
Glen Allen, VA 23060

§ 11. Delegation of authority.

The [~~executive~~] director, or a designee, may perform any act of the [State Water Control] Board under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

APPENDIX I - WEEKLY INSPECTION CHECKLIST

Aboveground Storage Tank Systems

..... 1. Containment dike or berm in satisfactory

condition.

..... 2. Containment area free of excess standing water or oil.

..... 3. Gate valves used for emptying containment areas secured.

..... 4. Containment area/base of tank free of high grass, weeds, and debris.

..... 5. Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.

..... 6. Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

..... 7. Leak detection equipment in satisfactory condition.

..... 8. Separator or drainage tank in satisfactory condition.

..... 9. Tank water bottom draw offs not in use are secured.

..... 10. Tank fill valves not in use are secured.

..... 11. Valves inspected for signs of leakage or deterioration.

..... 12. Inlet and outlet piping and flanges inspected for leakage.

~~[APPENDIX II. VAPOR/GROUNDWATER MONITORING GUIDELINE~~

~~Groundwater Monitoring Guidelines~~

~~This guidance document provides operators of AST facilities a detailed explanation of groundwater monitoring reporting requirements and procedures. Use these guidelines as a basic framework to conduct and report monthly, quarterly, and annual groundwater monitoring. Report any deviations from these guidelines to the VWCB AST Groundwater Monitoring Program, OSRR, P.O. Box 11143, Richmond, VA 23230, in writing prior to conducting any groundwater sampling.~~

~~One groundwater monitoring report summary should be submitted annually. The exception to this reporting procedure is if, during the year of monitoring, a release is detected. Facilities who discover a leak during this program's monitoring requirements must then perform reporting requirements under paragraph 1.2. The first yearly report should be submitted July 1, 1994. The annual groundwater monitoring report summary should consist of three sections and be submitted in the report format outlined below.~~

~~ANNUAL AST GROUNDWATER MONITORING REPORT FORMAT~~

~~Section I. Monthly Vapor Monitoring Report~~

~~1. Description of temperature, soil moisture conditions (i.e. last rainfall), monitoring sensor, calibration data including date of calibrations and calibration standards used, and any sensor maintenance at the time of vapor sampling.~~

~~2. Brief description of measurement gathering procedures.~~

~~3. Table of all monthly vapor concentrations and static water levels presented in a tabular format.~~

~~4. Identify on a monitoring well location map vapor concentrations, wells used to establish background vapor concentration measurements, and wells that show suspect readings.~~

~~Section II. Quarterly Groundwater Monitoring Report~~

~~1. Brief description of groundwater collection procedures.~~

~~2. Table of all visual groundwater inspection results.~~

~~3. Identify on a monitoring well location may any wells that showed visual indications of contamination.~~

~~4. Table of any laboratory groundwater sampling results.~~

~~Section III. Annual Groundwater Quality Evaluation~~

~~1. Summarize groundwater analytical sample results.~~

~~2. Table of analytical methods used.~~

~~3. Table of analytical results.~~

~~4. Isoconcentration map.~~

~~Appendix A - Groundwater Analytical Data including Chain of Custody forms~~

~~1.0 - Facilities Required to Report~~

~~Facilities with an aggregate capacity over 1 million gallons of hydrocarbons or hydrocarbon by-product are required to conduct groundwater monitoring and submit a yearly report.~~

~~1.1 Facilities Currently Conducting Groundwater Monitoring~~

~~Facilities that currently conduct periodic groundwater monitoring for petroleum constituents under a corrective action or remediation investigation and/or permit~~

~~requirements (other than VPDES permit requirements) do not have to submit groundwater monitoring reports for this program. Groundwater monitoring required by VR 680-14-13 commences at the time corrective action monitoring or other monitoring programs conclude. In the event that monitoring is currently conducted at the facility, documentation of other groundwater monitoring programs should be sent to the VWCB. This documentation should include the name and address of the facility, facility contact person, the name of the agency requesting periodic monitoring reports, an individual contact within the requesting agency, identification of wells being monitored, and constituents analyzed.~~

~~1.2 Facilities Under CAP Resulting from GCS~~

~~If groundwater contamination was discovered during the AST groundwater characterization study required by VR 680-14-07 then the facility shall submit yearly summaries of groundwater monitoring data collected under the VWCB's corrective action monitoring requirements. Groundwater monitoring required by VR 680-14-13 commences at the time corrective action monitoring concludes.~~

~~1.3 Facility Notification Requirements~~

~~Facilities must notify the VWCB 48 hours in advance of performing quarterly and annual groundwater sampling. Representatives from the VWCB may choose to be present and split groundwater samples for laboratory analysis.~~

~~Section 2.0 - Monitoring Schedule~~

~~2.1 Monthly Vapor Sampling~~

~~Monthly vapor monitoring of all wells installed or identified in the groundwater characterization study shall be conducted. Monthly vapor monitoring consists of collecting three measurements. Collect one measurement each day for three consecutive days. Measure static water levels using an electronic water level indicator or steel tape. Record measurements for each well sampled.~~

~~2.1.1 Vapor Monitoring System Design~~

~~The two major components used for a vapor monitoring system in this program are the groundwater monitoring well and the vapor monitoring device or sensor. A monitoring device is temporarily placed in well to collect vapor samples.~~

~~If the vapor monitoring device (sensor) does not react to the stored substance it is totally ineffective. Equally important, is a sensor's ability to avoid reacting to substances for which the site is not being monitored (i.e. methane). Manufacturers list the types of stored products that their sensor will effectively monitor. For a sensor to be effective at a site that has high background concentrations, it must be able to record and monitor a high level of vapors. The appropriate monitoring device to use when there are high background levels is one that is responsive to a high level of vapors. The level of background contamination and the desired range of detection should be considered before choosing a monitoring device. Vapor monitoring results must be carefully interpreted to differentiate between releases and interferences.~~

~~2.1.2 Background Vapor Concentrations~~

~~Background vapor concentrations should be established from upgradient monitoring wells. If the monitor indicates background concentrations are high (above 1,500 ppm for gasoline), further investigation should be undertaken to determine whether the concentrations are due to a current leak or off-site interference.~~

~~When background contamination is due to a past release or off-site interference, vapor monitoring can still be conducted if the contamination levels are below the alarm threshold limit of the monitor. Some instruments have adjustable threshold limits. If the background contamination levels exceed the instrument's threshold limit, the site can be injected with air to lower the level of contamination. This can be done by using an air pump to inject low levels of air through temporary wells into the soil. If background contamination levels cannot be reduced below the instrument's threshold limit, a tracer compound should be introduced. The use of a tracer avoids the problem of background contamination because the vapor monitor will react to the tracer compound, not to the compounds that are contained in the background contamination. The use of vapor detection tubes is not acceptable for monthly vapor monitoring.~~

~~2.1.3 Environmental Considerations~~

~~Temperature can be an inhibiting factor for proper vapor monitor operations. The colder the temperature, the less volatile the substance. Vapor measurements should be taken at approximately the same temperature month to month. For approximately every 20°F increase, the gasoline volatilization rate increases by about one-third. Temperature is not a problem when monitoring wells extend below the frost line. Soil moisture conditions can also inhibit vapor movement and volatilization rates.~~

~~2.1.4 Maintenance and Calibration~~

~~Calibrate equipment properly to detect vapors from stored product. Calibrations consists of exposing the monitor to a pure gas standard to ensure the monitor correctly responds to vapors. If a sensor is not calibrated correctly, it is likely to give either false positive or false negative results. Calibrations for portable monitors should be performed on a monthly basis before monthly vapor measurements are taken.~~

~~Maintenance of vapor monitoring sensors includes cleaning, calibration and operations checks. Maintenance~~

~~consists of recharging the electrical component and keeping the device clean. Some systems may require periodic replacement of a filament or a lamp.~~

~~2.1.5 Interpretations and Suspect Measurements~~

~~Vapor measurements that are at 50% higher than the background concentrations are considered suspect and further investigations should be conducted. For gasoline, vapor levels of 2,000 to 4,000 parts per million with an increasing trend will be also be considered suspect. This level can vary from site to site and for different brands of monitoring devices.~~

~~If vapor readings are suspect, immediately collect groundwater samples for visual examination. If free product or a sheen is encountered in a well immediately report the release to the VWCB at 804-527-5200. Take immediate action to prevent any further release of the substance into the environment and identify and mitigate fire, explosion, and vapor hazards.~~

~~Conduct free-product removal in a manner than minimizes the spread of contamination into previously uncontaminated zones. Use recovery and disposal techniques such has hand-bailers to remove any free product from monitoring wells. Properly treat, discharge, or dispose of recovered by-products in compliance with applicable local, state and federal laws and regulations.~~

~~If sheen or free product is visible in the groundwater sample, collect a groundwater sample for BTEX and TPH laboratory analysis. If 0.01 foot or more of free product is encountered then groundwater samples should not be submitted for laboratory analysis. If sheen or free product is not visible in the sample, continue vapor monitoring for an additional period of time (three to five additional days). If vapor measurements continue at the same rate or increase, collect a groundwater sample for BTEX and TPH laboratory analysis.~~

~~Groundwater samples should be collected and analyzed as outlined in the ODCP Groundwater Characterization Plan and referenced under paragraph 2.4 in this document. Additional information concerning vapor monitoring can be obtained from Detecting Leaks, Successful Methods, Step-by-Step, EPA Document No. EPA/530 UST-89/012.~~

~~2.1.6 Groundwater Level Measurements~~

~~Measure static water levels using an electronic water level indicator or steel tape. Static water level measurements should be taken prior to each monthly sampling event. Record measurements for each well sampled.~~

~~Reference all water-level measurements, including total well depth measurements, from an established and documented point on the top of the well casing. Measurements should be correlated with mean sea level datum and measured to the nearest 0.01 foot.~~

~~2.2 Quarterly Groundwater Monitoring~~

~~Quarterly groundwater monitoring of all wells installed or identified in the groundwater characterization study shall be conducted and reported. Quarterly groundwater monitoring consists of measuring static water levels, measuring for free product, and collecting groundwater grab samples for visual inspection for sheen or free product. One measurement per well should be collected.~~

~~2.2.1 Presence of Free Hydrocarbon Product~~

~~If free product or a sheen is encountered in a well immediately report the release to the VWCB at 804-527-5200. Take immediate action to prevent any further release of the substance into the environment; and identify and mitigate fire, explosion, and vapor hazards.~~

~~Conduct free-product removal in a manner than minimizes the spread of contamination into previously uncontaminated zones. Use recovery and disposal techniques such as hand-bailers to remove any free product from monitoring wells. Properly treat, discharge, or dispose of recovered by-products in compliance with applicable local, state and federal laws and regulations.~~

~~Measure the thickness of the hydrocarbon layer floating on groundwater if present. This can be done using an electronic measuring device, chemically-sensitive paste, or a clear acrylic bailer designed to collect a liquid sample where free product and groundwater meet. A graduated scale on the bailer is helpful for determining the thickness of free product. Record the thickness of free product for each well.~~

~~2.2.2 Interpretation~~

~~If sheen or free product is visible in the groundwater sample, collect a groundwater sample for BTEX and TPH laboratory analysis. If 0.01 foot or more of free product is encountered then groundwater samples should not be submitted for laboratory analysis. Record all results of visual groundwater monitoring. Groundwater samples should be collected and analyzed as outlined in the ODCP Groundwater Characterization Plan and referenced under paragraph 2.4 of this document.~~

~~2.3 Annual Laboratory Analysis of Groundwater~~

~~Annual groundwater monitoring of all wells installed or identified in the groundwater characterization study shall be conducted and reported. Annual groundwater monitoring consists of measuring static water levels and collecting groundwater samples for laboratory analysis. Groundwater samples should be collected and analyzed for BTEX and TPH from each well. If possible, collect groundwater samples in a period where groundwater levels are high (i.e. spring). Procedures for sampling groundwater for laboratory analysis measuring groundwater elevations are outlined in paragraphs 2.4 and 2.1.6 respectively.~~

~~2.4 Procedures for Groundwater Sampling~~

~~2.4.1 Purging Procedures~~

~~Calculate total well volume after determining the static water level of the well, but prior to collecting a sample. A minimum of three well volumes should be purged from the well. If the well is purged to dryness before three well volumes are obtained, no further purging is required. Collect samples as soon as a sufficient volume of groundwater recharges into the well.~~

~~All purged water shall be managed in accordance with local, state, and federal laws and regulations and in a manner that will not cause pollution.~~

~~All groundwater monitoring wells shall be sampled unless 0.01 foot or more of free product is encountered. In cases where free product is encountered, the depth of free product shall be documented to the nearest 0.01 foot and groundwater sampling shall not be required as long as free product is present. All monitoring wells containing less than 0.01 foot of free product should be sampled as described below.~~

~~2.4.1.1 Groundwater Sample Collection~~

~~Groundwater samples should be collected in a manner that reduces or eliminates the possibility of loss of volatile constituents from the sample. For collecting samples, a gas-actuated positive displacement pump or a submersible pump is preferred if pumping is required to sample. Disposable, teflon, or stainless steel bailers are acceptable for sample collection. Peristaltic pumps or airlift pumps should not be used. In order to keep agitation of the sample to a minimum, lower the bailer slowly into the water column. When transferring the sample from the bailer to the sample container minimize agitation. When collecting volatile organic samples completely fill the sample container so no air bubbles are trapped inside. All sample containers should be pre-cleaned and sealed by the distributor or laboratory. Each sample should be preserved with the proper preservative (i.e., HCL).~~

~~Cross-contamination from transferring pumps (or bailers) from well to well can occur and should be avoided by a meticulous cleaning between sampling episodes. Dedicated (i.e., permanent installation) well pumps, while expensive, are often cost effective in the long term (quarterly sampling requirements) and ensure data reliability relative to cross-contamination.~~

~~Upon collection, label and immediately place all samples in a cooler and chill to approximately 4°C or less. The samples should be maintained at 4°C or less until they are delivered to the laboratory for analysis.~~

~~2.4.1.2 Chain-of-Custody~~

~~A completed chain-of-custody form should accompany each groundwater sample. This form should be signed by the person collecting the sample, the laboratory receiving the sample, and all intermediary persons with possession of the sample. Sample security shall be maintained during all phases of transport.~~

~~2.4.2 Analytical Methods for Groundwater Sampling~~

~~The GCS requires laboratory analysis of Benzene, Toluene, Ethylbenzene and Total Xylenes (BTEX), Methyl-tert-butyl-ether (MTBE), Total Petroleum Hydrocarbons commonly referred to as TPH, for groundwater samples. Selection of the analytical method for TPH is more involved than selection of methods for other analytes. To avoid the need for variances of methods used for TPH analyses, specific analytical methods are recommended below for TPH constituents. Other state acceptable methods are listed in Table 2. Tabulate all analytical data and plot results on a isoconcentration map or overlay.~~

~~2.4.2.1 Selection of analytical methods for BTEX Analysis~~

~~Groundwater samples should be quantitatively analyzed for BTEX using EPA Method 8020 with Purge and Trap Method 5030. The practical quantitation limit (PQL) is .002 mg/L for water samples.~~

~~2.4.2.2 Selection of analytical methods for TPH Analysis for Gasoline~~

~~For analysis of hydrocarbons that correspond to a range of C6 to C10 and a boiling point range between 60° and 220°F, the Wisconsin Modified Gasoline Range Organics (GRO) Method or California GC/FID Method should be used. The PQL of the GRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.~~

~~2.4.2.3 Selection of analytical methods for TPH Analysis for Nos. 1 and 2 Fuel Oil, Nos. 1 and 2 Diesel, Kerosene, and Jet Fuel~~

~~For analysis of hydrocarbons that correspond to a range of C10 to C28 and a boiling point range between approximately 170° and 430°F, the Wisconsin Modified Diesel Range Organics (DRO) Method or California GC/FID Method should be used. The PQL of the DRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.~~

~~2.4.2.4 Selection of analytical methods for TPH Analysis for Heavy Hydrocarbons (Crude Oil, Nos. 5 and 6 Fuel Oil, Used Oil, and Hydraulic Oil)~~

~~For analysis of heavy hydrocarbon mixtures that have a boiling point greater than 430°F the Wisconsin Modified Total Recoverable Petroleum Hydrocarbons (TRPH) or Method 418.1 should be used. The PQL for TRPH is 1.0 mg/L or less in water samples. The PQL for Method 418.1 is 1.0 mg/L for water samples.~~

~~2.4.2.5 Selection of analytical methods for MTBE Analysis~~

~~*Groundwater samples should be quantitatively analyzed for MTBE using EPA Method 602 modified to include MTBE if monitoring for gasoline.*~~

~~*2.4.3 Field Quality Assurance*~~

~~*All sampling performed during the GCS must be conducted in accordance with the documented Field QA plan included in the QAPP. Field QA samples should be handled in an identical manner to actual samples. Results of the analysis of field and trip blanks must be included in the GCS report, and should be evaluated in the data assessment portions of the report.*~~

~~*2.4.3.1 Field QA Soil Samples - One field blank with every field sample batch. A field sample batch is defined as all samples taken during a single sampling event at each site and on each sampling day. Field blanks are deionized water samples collected from the same sampling and filtering equipment used as a check on decontamination procedures. One temperature blank per sampling event (batch of samples). One trip blank collected per sampling event. Trip blanks are reagent water samples analyzed both before leaving the lab upon their return as a check on contamination from sources outside samples.*~~

~~*2.4.3.2 Field QA Groundwater Samples - One field blank with every 10 samples (or less) collected. One temperature blank per sampling event (batch of samples). One trip blank collected per sampling event.*~~

APPENDIX II - GROUNDWATER AND VAPOR MONITORING GUIDELINE FOR ABOVEGROUND STORAGE TANKS (ASTS) (required by VR 680-14-13 § 6 A 4 c through 6 A 4 e.)

This guidance document contains procedures for AST facility operators who are required to conduct groundwater and vapor monitoring. Operators must use these guidelines as a basic framework to conduct monthly, quarterly, and annual groundwater monitoring and submit an annual AST Groundwater Monitoring Report. Report any proposed deviations from these guidelines in writing prior to conducting any groundwater sampling to:

Department of Environmental Quality (DEQ) - Water Division
AST Groundwater Monitoring Program
P.O. Box 11143
Richmond, VA 23230.

A comprehensive groundwater monitoring report must be submitted annually. The first annual groundwater report must be submitted by July 1, 1994. The annual groundwater monitoring report consists of three sections and must be submitted in the reporting format outlined below.

ANNUAL AST GROUNDWATER MONITORING REPORT FORMAT

Section I. Monthly Gauging of Groundwater Monitoring Wells

1. Summary of measurement procedures.

2. Table of static water levels recorded from monitoring wells.

Section II. Quarterly Groundwater and Vapor Monitoring

1. Summary of groundwater and vapor collection procedures.

2. Table of groundwater monitoring well visual inspection results.

3. Table of vapor measurements from monitoring-well headspaces.

Section III. Annual Groundwater Quality Evaluation

1. Summary of groundwater collection methods.

2. Summary of groundwater analytical results and interpretation.

3. Table of analytical methods used.

4. Table of analytical results.

5. Table of field and trip blank results.

Appendix A - Groundwater Laboratory Data including Chain-of-Custody forms

Appendix B - Laboratory Quality Assurance Review

Section 1.0 - Facilities Required to Report

Facilities with an aggregate capacity of 1,000,000 gallons or greater of oil/petroleum or oil/petroleum by-product are required to conduct groundwater and vapor monitoring at the facility and Groundwater Monitoring Program.

Facilities who conduct periodic groundwater monitoring for oil/petroleum constituents under an approved corrective action or remediation investigation do not have to report results from monitoring wells subject to use in these investigations.

Groundwater monitoring required by VR 680-14-13 for monitoring wells used in corrective action or remediation investigations begins when corrective action monitoring or other monitoring programs concludes. Verification of groundwater monitoring currently conducted at the facility must be sent to DEQ-Water Division, AST Groundwater Monitoring Program. This documentation should include the name and address of the facility, facility contact person, agency name requiring groundwater monitoring,

an individual contact within that agency, identification of wells being monitored, and constituents analyzed.

Section 2.0 - Groundwater and Vapor Monitoring Schedule

2.1 Monthly Gauging of Groundwater Monitoring Wells

Measure and record static water levels monthly. Reference all water-level measurements, including total well-depth measurements, from an established and documented point on the top of the well casing. Measurements should be correlated with mean sea level datum and measured to the nearest 0.01 ft.

2.2 Quarterly Vapor Monitoring

Quarterly vapor monitoring of all wells identified in the Oil Discharge Contingency Plan (ODCP) Groundwater Characterization Study shall be conducted prior to collecting quarterly groundwater samples. Quarterly vapor monitoring consists of collecting one monitoring-well head-space measurement. Record measurements for each well sampled.

2.2.1 Vapor Monitoring System Design

The two major components used for a vapor-monitoring system in this program are the groundwater monitoring well and the vapor monitoring device or sensor. A vapor monitoring device is placed in the well on a permanent or temporary basis to collect vapor samples.

2.2.2 Maintenance and Calibration of Vapor Sampling Equipment

Calibrate equipment properly to specifically detect vapors from product stored at the facility. Calibrations consists of exposing the monitor to a pure gas standard to ensure the monitor correctly responds to vapors. Calibrations for portable monitors should be performed on a quarterly basis before quarterly vapor measurements are taken.

Maintenance of vapor monitoring sensors includes cleaning, calibration and operations checks. Maintenance consists of recharging the electrical component and keeping the device clean. Some systems may require periodic replacement of a filament or a lamp. Additional information concerning vapor monitoring can be obtained from Detecting Leaks, Successful Methods, Step-by-Step, EPA Document No EPA/530/UST-89/012.

2.3 Quarterly Groundwater Sampling (Visual Inspection)

Quarterly groundwater sampling of all wells installed or identified in the ODCP Groundwater Characterization Study shall be conducted. Quarterly groundwater sampling consists of: (1) measuring for free product on top of groundwater, and (2) collecting groundwater samples for visual inspection.

Measure the thickness of the hydrocarbon layer floating on groundwater if present. Measuring devices must be able to detect at least .01 ft. of free product on top of the groundwater. This can be done using an electronic measuring device, chemically- sensitive paste, or a clear acrylic bailer designed to collect a liquid sample where free product and groundwater meet. A graduated scale on the bailer is helpful for determining the thickness of free product. Record the thickness of free product in each well.

If free product or a sheen is encountered in a monitoring well, immediately report the release to DEQ - Water Division at (804) 527-5200. Take immediate action to prevent any further release of the oil/petroleum into the environment; and identify and mitigate fire, explosion, and vapor hazards. Detection of at least .01 ft. of free product on the top of groundwater indicates a reportable discharge. Any correction action conducted must be approved in accordance with DEQ regional office guidance.

If sheen or product vapor is detected in the groundwater sample, collect a groundwater sample for BTEX and TPH laboratory analysis. Groundwater samples should be collected and analyzed as outlined in the ODCP Groundwater Characterization Study and referenced under paragraph 2.5 of this guidance. If 0.01 ft. or more of free product is measured, then groundwater samples should not be submitted for laboratory analysis since a discharge is evident. Record all results of visual groundwater monitoring.

2.4 Annual Groundwater Monitoring for Laboratory Analysis

Annual groundwater sampling of all wells identified in the ODCP Groundwater Characterization Study shall be conducted. Annual groundwater monitoring consists of collecting groundwater samples for laboratory analysis. Groundwater samples should be collected and analyzed for BTEX and TPH from each well. Procedures for sampling groundwater for laboratory analysis are outlined in paragraphs 2.5 of this guidance.

2.5 Procedures for Groundwater Sampling

All groundwater monitoring wells shall be sampled according to the procedures described below, unless 0.01 ft. or more of free product is encountered. In cases where free product is greater than 0.01 ft. groundwater sampling under this program shall not be required. However, thickness of free product must be recorded.

2.5.1 Groundwater Sample Collection

roundwater samples should be collected in a manner that reduces or eliminates the possibility of loss of volatile constituents from the sample. For collecting samples, a gas- actuated positive displacement pump or a submersible pump is preferred if pumping is required to

sample. Dedicated or disposable PVC, teflon, or stainless steel bailers are acceptable for sample collection. Peristaltic pumps or airlift pumps should not be used. In order to keep agitation of the sample to a minimum, lower the bailer slowly into the water column. When transferring the sample from the bailer to the sample container minimize agitation. When collecting volatile organic samples completely fill the sample container so no air bubbles are trapped inside. All sample containers should be pre-cleaned and sealed by the distributor or laboratory. Each sample should be preserved with the proper preservative (i.e., HCL).

Cross-contamination from transferring pumps (or bailers) from well to well can occur and should be avoided by a meticulous cleaning between sampling episodes. Dedicated (i.e., permanent installation) well pumps, while expensive, are often cost effective in the long term (quarterly sampling requirements) and ensure data reliability relative to cross-contamination.

Upon collection, label and immediately place all samples in a cooler and chill to approximately 4°C or less. The samples should be maintained at 4°C or less until they are delivered to the laboratory for analysis.

2.5.2 Chain-of-Custody

A completed chain-of-custody form should accompany each groundwater sample. This form should be signed by the person collecting the sample, the laboratory receiving the sample, and all intermediary persons with possession of the sample. Sample security shall be maintained during all phases of transport.

2.6 Groundwater Analytical Methods

Laboratory analysis of Benzene, Toluene, Ethylbenzene and Total Xylenes (BTEX), Methyl-tert-butyl-ether (MTBE), and Total Petroleum Hydrocarbons commonly referred to as TPH, for groundwater samples is required. Selection of the analytical method for TPH is more involved than selection of methods for other analytes. To avoid the need for variances of methods used for TPH analyses, specific analytical methods are recommended below for TPH constituents. Other state acceptable methods are listed in Table 1.

2.6.1 Selection of analytical methods for BTEX Analysis

Groundwater samples should be quantitatively analyzed for BTEX using EPA Method 8020 with Purge and Trap Method 5030. The practical quantitation limit (PQL) is .002 mg/L for water samples.

2.6.2 Selection of analytical methods for TPH Analysis for Gasoline

For analysis of hydrocarbons that correspond to a range of C6 to C10 and a boiling point range between 60° and 220°F, the Wisconsin Modified Gasoline Range Organics (GRO) Method or California GC/FID Method should be used. The PQL of the GRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.

2.6.3 Selection of analytical methods for TPH Analysis for Nos. 1 and 2 Fuel Oil, Nos. 1 and 2 Diesel, Kerosene, and Jet Fuel

For analysis of hydrocarbons that correspond to a range of C10 to C28 and a boiling point range between approximately 170° and 430°F, the Wisconsin Modified Diesel Range Organics (DRO) Method or California GC/FID Method should be used. The PQL of the DRO method is 0.1 mg/L for water. The PQL for the California method is .5 mg/L for water.

2.6.4 Selection of analytical methods for TPH Analysis for Heavy Hydrocarbons (Crude Oil, Nos. 5 and 6 Fuel Oil, Used Oil, and Hydraulic Oil)

For analysis of heavy hydrocarbon mixtures that have a boiling point greater than 430°F the Wisconsin Modified Total Recoverable Petroleum Hydrocarbons (TRPH) or Method 418.1 should be used. The PQL for TRPH is 1.0 mg/L or less in water samples. The PQL for Method 418.1 is 1.0 mg/L for water samples.

2.6.5 Field Quality Assurance

All sampling must be conducted in accordance with the documented field QA plan included in the QAPP for the ODCP Groundwater Characterization Study. Field QA samples should be handled in an identical manner to actual samples. Results of the analysis of field and trip blanks must be included in the monitoring report, and should be evaluated in the data assessment portions of the report.

2.6.6 Field QA Groundwater Samples

One field blank with every 20 samples (or less) must be collected. One temperature blank and one trip blank must be collected per cooler.

2.6.7 Laboratory Quality Assurance Review

This review consists of an examination of analytical methods, analytical results, QA/QC results for surrogate recovery, matrix spike recovery, relative percentage differences, laboratory control samples and method blanks. The purposes of the QA review are to verify that QA/QC performance criteria established for the relevant standard methods is met and assess the potential error associated with the analytical results due to nonconformances with QA/QC performance criteria.]

TABLE I

Acceptable Analytical Methods For Petroleum Contaminated Sites

Parameter	Analytical Methods *1	Practical Quantitation Limit	
		Soil	Water
BTEX	EPA 503.1		*3
	EPA 524.1		*3
	EPA 624		*3
	SW-846 8020	.005 mg/kg	.002 mg/L
	SW 846 8021	*3	*3
	SW-846 8240	.005 mg/kg	.005 mg/L
TPH			
Gasoline	California Method	10.0 mg/kg	.5 mg/L
(C_6-C_{10}, 60°F < BP < 220°F)	Wisconsin Modified GRO*2	10.0 mg/kg	.1 mg/L
Diesel, Nos. 1 & 2 Fuel Oil, Jet Fuel, Kerosene (C_{10}-C_{28}, 170°F < BP < 430°F)	California Method	10.0 mg/kg	.5 mg/L
	Wisconsin Modified DRO*2	10.0 mg/kg	.1 mg/L

Crude Oil, Nos. 5 & 6 Fuel Oil, Used Oil, Hydraulic Oil (BP > 430°F)	EPA 413.2		
	EPA 418.1		1.0 mg/L
	Wisconsin TRPH*2	10.0 mg/kg	1.0 mg/L
PAHs/PNAs	EPA 525		*3
Polycyclic Aromatic HCs/	EPA 610		*3
Poly-Nucleic Aromatic HCs	EPA 625		*3
	SW 846 8100	*3	*3
	SW-846 8270	1.0 mg/kg	.01 mg/L
	SW-846 8310	*3	*3
MTBE	EPA 602 (mod)		
	SW 846 8020 (mod)		
Lead	SW-846 7421		.001 mg/L

*1 - Sample matrix is method dependent

*2 - Gasoline Range Organics, Diesel Range Organics, Total Recoverable Petroleum Hydrocarbons - Wisconsin DNR, 1992

*3 - See method summary for PQLs/MDLs of individual constituents. Substitute MDLs for PQLs when PQLs are not listed in the method.

References:

EPA 100-400 Series - Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March, 1983

EPA 500 Series - Methods for the Determination of Organic Compounds in Drinking Water, EPA-600/4-88/039, December 1988

EPA 600 Series - 40 CFR, Part 136, 1992

Test Methods for Evaluating Solid Waste Physical/Chemical, Third Edition, Revision 1, November 1990

PUBL-SW-140 Wisconsin Department of Natural Resources, 1992

PUBL-SW-141 Wisconsin Department of Natural Resources, 1992

PUBL-SW-143 Wisconsin Department of Natural Resources, 1992

BUREAU OF INSURANCE

May 3, 1993

Administrative Letter 1993-6

TO: RATE SERVICE ORGANIZATIONS AND ALL LICENSED PROPERTY AND CASUALTY INSURERS IN VIRGINIA

RE: INSTALLMENT PAYMENT PLANS

It has come to the attention of the State Corporation Commission Bureau of Insurance (Bureau) that some insurers may be charging individual insureds differing down payment amounts, based on subjective underwriting criteria.

Effective immediately, installment payment plan rules on file with the Bureau must include all available installment options, down payment requirements, and installment service charges. As in the past, a single installment payment plan filing will suffice for all lines of insurance and/or program, for each insurer to which the filing applies.

To ensure compliance, please review the programs you currently have on file in Virginia, and file an amended manual page(s), if necessary to bring your filings into compliance with these requirements.

/s/ Steven T. Foster
Commissioner of Insurance

BUREAU OF INSURANCE

May 3, 1993

Administrative Letter 1993-12

TO: All Companies Licensed to Write Accident and Sickness Insurance in Virginia

RE: Long-Term Care Insurance Reporting Requirements

The purpose of this Administrative Letter is to remind all companies issuing long-term care insurance policies in the Commonwealth of Virginia, of the reports required to be filed annually with the Commission. A review of our records shows that many companies have failed to file these reports.

Virginia Insurance Regulation No. 40, Section 9.E., requires that every insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall furnish this information to the Virginia State Corporation Commission's Bureau of Insurance in the format prescribed by the National Association of Insurance Commissioners (NAIC).

Section 13, Subsections B., D., and E. of the same regulation requires that each insurer shall report to the Commission, annually by June 30, the following information:

1. The ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Section 13.A.;

2. The number of lapsed policies as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the end of the preceding calendar year; and

3. The number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding year.

The above requirements apply to any insurance company, health services plan, fraternal benefit society, health maintenance organization, cooperative nonprofit life benefit company or mutual assessment life, accident and sickness insurer that delivered or issued for delivery long-term care insurance policies on or after January 1, 1992.

Attached is a copy of the sections of Virginia Insurance Regulation No. 40 which were previously cited. If you have any questions, please contact in writing:

Ms. Althelia P. Battle
Senior Insurance Market Examiner
Bureau of Insurance
Life and Health Division
P. O. Box 1157
Richmond, Virginia 23209

Thank you for your anticipated cooperation in seeing that these reports are filed with us in an accurate and timely manner so that the Bureau of Insurance does not need to invest its resources in following up to ensure compliance in this matter.

/s/ Steven T. Foster
Commissioner of Insurance

Section 9. Prohibition of Post-Claims Underwriting

E. Every insurer selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated, and shall annually furnish this information to the Commission in the format prescribed by the National Association of Insurance Commissioners.

Section 13. Reporting Requirements

A. Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Each insurer shall report annually by June 30 the ten percent (10%) of its agents with the greatest percentages of lapses and replacements as measured by Subsection A above.

C. Reported replacement and lapse rates do not alone constitute a violation of the insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every insurer shall report annually by June 30 the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

E. Every insurer shall report annually by June 30 the number of replacement polices sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

F. For purposes of this section, "policy" shall mean only long-term care insurance and "report" means on a statewide basis.

DIRECTOR'S ORDER NUMBER THIRTEEN (93)

ON-LINE LICENSING PROGRAM FOR THE VIRGINIA BEACH OCEANFRONT TOURIST AREA.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby publish criteria for the On-Line Licensing Program for the Virginia Beach Oceanfront Tourist Area, as provided by Section 2.3.B of the State Lottery Department On-Line Game Regulations, VR 447-02-2. These criteria amplify and conform to the duly adopted State Lottery Department regulations for the conduct of on-line game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Office of the Director, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220-8689.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect, unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: April 16, 1993

DIRECTOR'S ORDER NUMBER FOURTEEN (93)

"CASH 5"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Cash 5" promotional game and drawing rules for the promotional events for Virginia's fourth on-line game lottery. The promotional will be conducted from May 7 through June 5, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until June 30, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: May 5, 1993

DIRECTOR'S ORDER NUMBER FIFTEEN (93)

VIRGINIA'S EIGHTEENTH AND TWENTY-FIFTH INSTANT GAME LOTTERY, "LUCKY 21," AND VIRGINIA'S TWENTY-FIRST INSTANT GAME LOTTERY, "MAGIC NUMBER"; END OF GAME.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby give notice that Virginia's eighteenth and twenty-fifth instant game lottery, "Lucky 21," and Virginia's twenty-first instant game lottery, "Magic Number," will officially end at midnight on Thursday, June 3, 1993. The last day for lottery retailers to return for credit unsold tickets from "Lucky 21" and "Magic Number" will be Thursday, June 24, 1993. The last day to redeem winning tickets for "Lucky 21" and "Magic Number" will be Tuesday, November 30, 1993, 180 days from the declared official end of the games. Claims for winning tickets from "Lucky 21" and "Magic Number" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a postmark of November 30, 1993, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

This order is available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia; and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: May 6, 1993

EMERGENCY REGULATIONS

MARINE RESOURCES COMMISSION

Title of Regulation: **VR 450-01-0090. Pertaining to Recreational Gear Licenses.**

Statutory Authority: §§ 28.2-226.1 and 28.2-226.2 of the Code of Virginia.

Effective Dates: April 12, 1993, to May 12, 1993.

Preamble:

This regulation establishes licenses for the recreational and personal use of certain fishing and crabbing gear. It limits the amount of gear and the catch, and establishes gear identification requirements and harvest reporting requirements for the licensees.

VR 450-01-0090. Pertaining to Recreational Gear Licenses.

§ 1. Authority, effective date.

A. This emergency regulation is promulgated pursuant to the authority contained in §§ 28.2-226.1 and 28.2-226.2 of the Code of Virginia.

B. The effective date of this emergency regulation is April 12, 1993.

§ 2. Purpose.

The purpose of this regulation is to establish licenses for the recreational and personal use of certain fishing and crabbing gear. Limits are established on the amount of gear which may be used and the amount of catch which may be taken. Gear identification requirements and harvest reporting requirements are established to reduce the possibilities of gear conflicts and to assess the levels of harvest made by recreational users of commercial gear.

§ 3. Recreational gear licenses.

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of Virginia shall first pay the specified fee and obtain the license for the appropriate gear, as follows:

1. *Recreational gill net .....$ 7.50*
2. *Recreational fish cast net .....$ 8.00*
3. *Recreational fish dip net .....$ 6.00*
4. *Recreational crab pot $29.00*
5. *Recreational crab trap .....$ 5.00*

B. Any license to use fishing gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

C. No person shall be issued more than one recreational gill net license, more than one recreational crab pot license, nor more than one crab trap license.

§ 4. Gear restrictions.

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this regulation.

B. It shall be unlawful for any person to use more than 10 crab pots when licensed for recreational purposes under this regulation.

C. Any law or regulation applying to the setting or fishing of commercial gill nets, cast nets, dip nets, crab pots or crab traps shall also apply to these gear when set or fished for recreational purposes.

D. It shall be unlawful for any person to use any recreational gill net, fish cast net, or fish dip net to catch and possess any species of fish whose commercial fishery is controlled by an annual harvest quota.

E. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational bag limit for any species regulated by such a limit.

§ 5. Gear marking requirements.

In addition to the requirements for marking commercial gill nets, crab pots and crab traps, each licensee shall mark the end flags, poles or buoys of their gear with the letter "R."

§ 6. Reporting requirements.

Any person using recreational gear described in § 3 of this regulation shall report annually, on forms provided by the commission, the weight and species harvested, location of harvest, days fished, and amount of gear used.

§ 7. Penalty.

Any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

William A. Pruitt
/s/ Commissioner

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF COMMERCE (BOARD OF)

Title of Regulation: **VR 190-02-1. Agency Rules of Practice for Hearing Officers (REPEALING).**

Governor's Comment:

The proposal would enhance the administrative efficiency and effectiveness of the agency. Pending public comment, I have no objections.

/s/ Lawrence Douglas Wilder
Governor
Date: April 28, 1993

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-28-100. Regulations for Disease Reporting and Control.**

Governor's Comment:

I do not object to the initial draft of these regulations contingent upon the inclusion of a definition for waterborne outbreaks in Section 1.1. Also, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: May 13, 1993

* * * * * * * * *

Title of Regulation: **VR 1987 State Medical Facilities Plan (REPEALING).**

Title of Regulation: **VR 355-30-100 through VR 355-30-113. Virginia State Medical Facilities Plan.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: May 18, 1993

BOARD FOR WASTE MANAGEMENT FACILITIES OPERATORS

Title of Regulation: **VR 674-01-01. Public Participation Guidelines for Waste Management Facilities Operators Board.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: May 5, 1993

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.

ALCOHOLIC BEVERAGE CONTROL BOARD

† Notice to the Public

A. Pursuant to the Virginia Alcoholic Beverage Control Board's "Public Participation Guidelines for Adoption or Amendment of Regulations" (VR 125-01-1, § 5.1 of the Regulations of the Virginia Alcoholic Beverage Control Board), the board will conduct a public hearing on Wednesday, October 27, 1993, at 10 a.m., in the Board Hearing Room, First Floor, ABC Board Main Offices, 2901 Hermitage Road, Richmond, Virginia, to receive comments and suggestions concerning the adoption, amendment or repeal of board regulations. Any group or individual may file with the board a written petition for the adoption, amendment or repeal of any regulation. Any such petition shall contain the following information, if available.

1. Name of petitioner.
2. Petitioner's mailing address and telephone number.
3. General description of proposal, with recommendations for adoption, amendment or repeal of specific regulation(s).
4. Why is change needed? What problem is it meant to address?
5. What is the anticipated effect of not making the change?
6. Estimated costs or savings to regulated entities, the public, or others incurred by this change as compared to current regulations.
7. Who is affected by recommended change. How affected?
8. Draft language; and
9. Supporting documents.

The board may also consider any other request for regulatory change at its discretion. All petitions for requests for regulatory changes should be submitted to the board no later than Wednesday, June 30, 1993.

B. Petitions for regulatory change should be sent to Robert N. Swinson, Administrator to the Board, P.O. Box 27491, Richmond, Virginia 23261, or may be faxed to (804) 367-1802 if the original paperwork is also mailed.

C. Applicable laws or regulations (authority to adopt regulations): §§ 4-7(1), 4-11, 4-36, 4-69.2, 4-72.1, 4-98.14, 4-103(b) and 9-6.14:1 et seq., of the Code of Virginia; VR 125-01-1, § 5.1, Board Regulations.

D. Entities affected: (1) all licensees (manufacturers, wholesalers, importers, retailers) and (2) the general public.

E. For further information contact Robert N. Swinson, Administrator, at the above address or by telephone at (804) 367-0616.

AUDITOR OF PUBLIC ACCOUNTS

† Specifications for Audits of Counties, Cities and Towns

The Auditor of Public Accounts (APA) has completed a draft of revisions to the Specifications for Audits of Counties, Cities and Towns. This draft is now available for public comment. See Calendar of Events section of the Virginia Register for information on public hearings.

Summary of Revisions and Manual Contents

Chapter 1 - Introduction. This chapter discusses the organization of the manual and the procedures used by the Auditor of Public Accounts in revising it. It also contains an order form for additional copies of the manual and other APA publications.

Chapter 2 - Authority for Audits. This chapter discusses the Auditor of Public Accounts' authority to issue audit and accounting specifications. The chapter has been updated to include changes in the Code of Virginia since the last revision of the manual, including changes required by House Bill 1330, adopted by the 1993 General Assembly. A summary of applicable standards for certain specialized audits (i.e., school cafeteria funds, authorities, boards, and commissions, etc.) was also added.

Significant policy changes include new procedures for submission of Comprehensive Annual Financial Reports (CAFRs) to state grantor agencies. The Auditor of Public Accounts currently acts as a clearinghouse for the distribution of CAFRs to state agencies. The discussion document proposes that local governments submit CAFRs directly to the appropriate grantor agencies, thereby removing the Auditor of Public Accounts from the distribution process. See Section 2-6 of the discussion document for further details.

Chapter 3 - Characteristics of Local Governments. This chapter provides an overview of local government operations in Virginia. Discussions in the current manual are limited to counties. The 1993 revision has been expanded to include cities and towns.

Chapter 4 - Authoritative Literature. This is a new chapter designed to provide an overview of existing authoritative literature for local governments. This literature has been grouped into three broad categories: (1) accounting principles; (2) auditing standards; and (3) the requirements of OMB Circular A-128, Audits of State and Local Governments. A discussion of relevant sources is included for each category. Appendices containing copies of the Single Audit Act of 1984, OMB Circular A-128, and the detailed listing of applicable accounting standards have been deleted from the 1993 revision. Section 4-7 contains addresses for ordering this information.

Chapter 5 - Procurement or Audit Services. This is a new chapter discussing the procurement of audit services. It details the elements necessary to establish a sound procurement process and ensure compliance with federal and state laws and regulations. A revised sample request for proposal and audit contract are included as appendices to this chapter.

Chapter 6 - Internal Controls and Compliance. This is a new chapter discussing the auditor's responsibilities relative to internal controls, compliance, and the detection of errors, irregularities and illegal acts. Rather than impose additional requirements, it seeks to clarify existing standards in these areas. It also discusses the Auditor of Public Accounts' expectations as to working paper documentation for these areas.

Chapter 7 - Quality Control Program. This is a new chapter describing the Auditor of Public Accounts' quality control program for local government audits. It incorporates procedures previously issued in memorandum format. Chapter 7 includes the Auditor of Public Accounts' policies and procedures for desk reviews of CAFRS and for quality control reviews of the CPAs working papers. Appendices containing the sample quality control reports and review program have been deleted from the 1993 revision. The quality control review program is currently available upon request from the Auditor of Public Accounts.

Significant policy changes include:

a. New procedures for the approval of CAFRs. Effective for FY 93, the Auditor of Public Accounts will no longer approve CAFRs. As part of its quality control program, the Auditor of Public Accounts will perform a desk review of CAFRs and will communicate significant findings to the governing body and affected state agencies at the completion of the review. However, payment of audit fees is no longer contingent upon approval by the Auditor of Public Accounts. See Section 7-2 of the discussion document for further details.

b. New procedures for the review of draft CAFRs. The Auditor of Public Accounts will review draft CAFRs only upon the request of the local government or its auditors. Individuals who submit drafts will be given a reasonable period of time to make changes and submit final copies of the report. See Section 7-2 of the discussion document for further details.

c. New procedures for the communication of findings resulting from quality control reviews of local government audits. The Auditor of Public Accounts will notify local governments of the review only if it discloses significant audit failure. (The results of all quality control reviews are open for public inspection at the Auditor of Public Accounts.) A provision for notifying affected state and federal grantor agencies was also added to the chapter. See Section 7-6 of the discussion document for further details.

Chapter 8 - Required Audit Procedures. This chapter contains required audit procedures for local governments audits in Virginia. An appendix summarizes all required procedures contained in this chapter. The most significant change to this chapter is the deletion of a substantial number of required audit procedures. Many of the required procedures in the current specifications provided evidential matter to support the auditor's opinion on the financial statements. Changes to auditing standards have eliminated the need for such detailed procedures. The procedures listed in this discussion document are limited to procedures required by the APA that are in addition to those required by other standards, and are designed to meet the special needs of local governments in Virginia.

Significant changes to the required audit procedures include the addition of a requirement that auditors:

a. Include constitutional officers in the scope of the audit as required by House Bill 1330. See Sections 8-2 of the discussion document for further details.

b. Submit three copies of the CAFR to the Auditor of Public Accounts upon release or issuance, but no later than the day after the public hearing required by § 15.1-167 of the Code of Virginia. See Sections 8-29 of the discussion document for further details.

c. Perform agreed upon procedures for transmittal forms. See Section 8-31 of the discussion document for further details.

Chapter 9 - Required Audit Procedures for State Compliance. This new chapter contains required audit procedures for determining compliance with certain state laws, regulations and policies. The Auditor of Public Accounts has been working with various state agencies to incorporate state compliance issues into the local government audit, thereby eliminating the need for separate program audits. Chapter 9 reflects our efforts in

this area. An appendix summarizes all required procedures contained in the chapter.

Significant changes to the required audit procedures include:

a. The incorporation of procedures for highways maintenance funds, community diversion incentive funds, and the Route 28 Transportation Improvement District previously issued in memorandum format.

b. New requirements for the Virginia Conflicts of Interest Act, Unclaimed Property Act, social services programs and economic development opportunity funds.

Chapter 10 - Treasurer's Turnover Audits. This chapter provides background information and required audit procedures for treasurer's turnover audits. Turnover audits are required to determine accountability whenever a treasurer, or director of finance acting as treasurer, leaves office. The 1993 revision includes a revised auditor's report reflecting changes in auditing standards since the issuance of the current specifications.

Audit and Accounting Alerts. This section was added to allow for the insertion of audit and accounting alerts issued by the Auditor of Public Accounts.

DEPARTMENT OF HEALTH

† Maternal and Child Health Block Grant Application Fiscal Year 1994

The Virginia Department of Health will transmit to the federal Secretary of Health and Human Services by July 16, 1993, the Maternal and Child Health Services Block Grant Application for the period October 1, 1993, through September 30, 1994, in order to be entitled to receive payments for the purpose of providing maternal and child health services on a statewide basis. These services include:

1. Preventive and primary care services for pregnant women, mothers and infants up to age 1.

2. Preventive and primary care services for children and adolescents.

3. Family-centered, community-based, coordinated care and the development of community-based systems of services for children with special health care needs.

The Maternal and Child Health Services Block Grant Application makes assurance to the Secretary of Health and Human Services that the Virginia Department of Health will adhere to all the requirements of Section 505, Title V-Maternal and Child Health Services Block Grant of the Social Security Act, as amended. To facilitate public comment, this notice is to announce a period from May 31 through June 29, 1993, for review and public comment on the Block Grant Application. Copies of the document will be available as of May 31, 1993, in the office of the director of each county and city health department. Individual copies of the document may be obtained by contacting Ms. Susan Brown Davis at the following address; written comments must be addressed to Ms. Davis and received by June 29, 1993, at the following address:

Virginia Department of Health
Division of Maternal and Child Health
1500 East Main Street, Room 137
Richmond, Virginia 23219
(804) 786-7367
FAX (804) 371-6032

VIRGINIA CODE COMMISSION

† Notice to the Public

The 1993 General Assembly enacted legislation (Chapter 735) which established August 15, 1993, as the last day on which state agencies may file with the Registrar of Regulations, regulations and other written statements subject to the Virginia Register Act. Chapter 735 further states that if such documents are not filed by that date, they shall cease to have the force of the law and shall not be enforceable. Filing such regulations or other written statements will not render them enforceable if, in fact, such documents will need to be promulgated under the provisions of the Administrative Process Act.

All state agencies were provided with a copy of the 1993 legislation and the letter set out below.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591

March 30, 1993

MEMORANDUM

TO: Heads of State Agencies and Regulatory Coordinators

FROM: Joan W. Smith JWS

RE: Senate Bill No. 639 - Filing of Certain Documents

The 1993 General Assembly enacted legislation which establishes August 15, 1993 as the last day that an agency can file documents with this office which meet certain specified criteria. After that date, such documents will be unenforceable unless the agency has complied with the Virginia Register Act and, if applicable, the Administrative Process Act. Copies of Senate Bill No. 639 (Chapter 735) and The Virginia Register Act as amended in 1993, are enclosed for your information.

You are urged to review all documents that are currently being enforced and which meet the following requirements:

1. Documents which are subject to the Virginia Register Act;
2. Documents which have general application; and
3. Documents which currently are being enforced as having the force of law.

You will note that the Register Act defines "Rule or Regulation" as ". . . any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic law."

Also enclosed is a fact sheet which can be used to help determine which documents will have to be filed.

I strongly urge you to have the Attorney General's Office assist you in making the determination on which documents will need to be filed and published, and especially, which of those documents will need to be promulgated under the Administrative Process Act.

JWS/jbc
Enclosures

1993 SESSION

VIRGINIA ACTS OF ASSEMBLY - CHAPTER 735

An Act to require state agencies to file all regulations and other statements having the force of law, all of which are subject to the Register Act.

[S 639]

Approved MAR 2 8 1993

Whereas, the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, defines "rule or regulation" to mean "any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws"; and

Whereas, under the Virginia Register Act, it is the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations and such information regarding any regulations as may be requested by the Virginia Code Commission; and

Whereas, some state agencies subject to the Virginia Register Act are currently enforcing their regulatory powers through regulations which have not been properly filed with the Registrar and by issuing written statements including but not limited to "resolutions," "administrative letters," "directives," "state plans," "manuals," or "policies, procedures and guidelines" which are intended by such agency to have the force of law and have general application but are not on file with the Registrar; and

Whereas, the General Assembly authorized the Virginia Code Commission to arrange for the publication of a Code of Administrative Regulations when the Code Commission determines that the publication would be in the best interests of the citizens of the Commonwealth; and

Whereas, the Code Commission has found that the entire regulatory law should be accessible and readily and economically available to the citizens, who have both the right and the need to know the regulatory law as promulgated and enforced by the various state agencies; and

Whereas, the Virginia Code Commission through the Registrar of Regulations is developing a database which will include the full text or text by reference of all the regulatory law required to be filed under the Virginia Register Act so that a publisher may use the electronic tape to create a regulatory code; and

Whereas, the Registrar needs to have all regulations and written statements of general application having the force of law in order to develop and maintain the database; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. All state agencies which are subject to the filing requirements of the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of Title 9 of the Code of Virginia, shall have properly filed for publication by August 15, 1993, with the Registrar of Regulations all regulations or other written statements, including but not limited to resolutions, administrative letters, directives, state plans, manuals, or policies, procedures and guidelines, which are subject to the Virginia Register Act, which have general application, and which currently are being enforced as having the force of law. If such regulations or other written statements are not filed by August 15, 1993, they shall cease to have the force of law and shall not be enforceable. The filing of such regulations or other written statements pursuant to this section shall not be deemed to give to any such regulation or other written statement the force of law and render it enforceable if it is otherwise unenforceable.*

§ 2. The Registrar of Regulations shall assist each state agency in its filing as required in § 1 by delivering a listing which identifies all such regulations and other written statements of that agency which are on file in the Registrar's office. Such listing shall be delivered to each agency by July 1, 1993. Each agency shall return a copy of the listing to the Registrar certifying that all such regulations and other written statements which the agency is currently enforcing are either (i) contained in the listing or (ii) not contained in the listing. If the listing does not contain all such regulations and other written statements, the agency shall properly file with the Registrar by the August 15 deadline such regulations and other written statements that were not on the list.

2. That an emergency exists and this act is in force from its passage.

† Notice of Request for Proposal

(The Notice of RFP was published on Sunday, May 16, 1993, in the Richmond Times-Dispatch, The Roanoke Times, the Norfolk-Virginian Pilot and the Washington Post.)

NOTICE OF REQUEST FOR PROPOSAL

The Virginia Code Commission is seeking proposals from qualified law publishers for the development, compilation and publication of a Virginia Administrative Code, which will include the regulations of state agencies of the Commonwealth of Virginia. The selected publisher will be expected to perform certain editorial work and to develop, along with the Code Commission, a system of codification and indexing of the regulatory laws of Virginia. The proposal requires a statement of qualifications, including previous experience in legal publishing. A RFP may be obtained from:

Joan W. Smith
Registrar of Regulations
Virginia Code Commission
General Assembly Building
Capitol Square
Richmond, Virginia 23219
(804) 786-3591

A pre-proposal conference will be conducted by the Commission at the General Assembly Building on Wednesday, June 16, 1993.

Sealed proposals will be received at the above address until July 1, 1993.

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.

ERRATA

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Title of Regulation: VR 380-03-02:1. Virginia Work-Study Program Regulations.

Publication: 9:17 VA.R. 2906-2910 May 17, 1993.

Correction to Final Regulation:

Page 2910, column 1, paragraph 1 (§ 5.6), line 6 after "session" delete "for activities that are political in nature]"

BOARD OF PHARMACY

Title of Regulation: VR 530-01-1. Virginia Board of Pharmacy Regulations.

Publication: 9:16 VA.R. 2566-2592 May 3, 1993.

Correction to Proposed Regulation:

Page 2570, column 2, subdivision 2 e of § 1.4 should read:

e. A wholesale distributor permit shall be $100 annually.

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)

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 ☎

* * * * * * * *

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 values[1] 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.

Aquaculture Advisory Board

† **June 4, 1993 - 9 a.m.** – Open Meeting
Augusta County Extension Office, Conference Room, Verona, Virginia.

The board will meet in regular session to discuss issues related to the Virginia aquaculture industry. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact the Virginia Aquaculture Advisory Board identified in this notice at least 3 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: T. Robins Buck, Secretary, Virginia Aquaculture Advisory Board, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23209, telephone (804) 731-6094.

Virginia Egg Board

† **June 25, 1993 - 3:30 p.m.** – Open Meeting
The Cavalier Hotel, Ocean Front at 42nd Street, Oceans Room, Virginia Beach, Virginia.

The board will meet to discuss issues related to the egg industry and the Virginia Egg Board. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Cecilia Glembocki, Program Director, at least 5 days prior to the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Cecilia Glembocki, Program Director, 911 Saddleback Court, McLean, VA 22102, telephone (703) 734-8931.

Virginia Marine Products Board

† **June 22, 1993 - 5:30 p.m.** – Open Meeting
Nick's Steak and Spaghetti House, Route 17, Gloucester Point, Virginia.

The board will meet to receive reports from the executive director of the Virginia Marine Products Board on (i) finance; (ii) marketing; (iii) past and future program planning; (iv) publicity/public relations; and (v) old and new business. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Shirley Estes, Executive Director, 554 Denbigh Boulevard, Suite B, Newport News, VA 23602, telephone (804) 874-3474.

Virginia Sweet Potato Board

† **June 9, 1993 - 8 p.m.** – Open Meeting
Eastern Shore Agriculture Experiment Station, Research Drive, Painter, Virginia.

The board will meet to discuss marketing, promotion, research and education programs for the state's sweet potato industry and to adopt the board's budget. Any person who needs any accommodation in order to participate at the meeting should contact Bill Mapp, Program Director, at least 5 days prior to the meeting, so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Box 26, Onley, VA 23418, telephone (804) 787-5867.

Winegrowers Advisory Board

† **July 6, 1993 - 10 a.m.** – Open Meeting
State Capitol, 910 Capitol Square, House Room 1, Richmond, Virginia.

A meeting to hear committee and project monitor reports and review old and new business. Any person who needs any accommodation in order to participate at the Virginia Winegrower's Advisory Board meeting should contact Wendy Rizzo, identified in this notice at least 14 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, 1100 Bank Street, Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

† **June 4, 1993 - 9 a.m.** – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Innsbrook, Richmond, Virginia.

† **June 9, 1993 - 9 a.m.** – Open Meeting
James Monroe Building, Room C, Richmond, Virginia.

The board will hold a regular business meeting at this

time. Agendas will be available two weeks before the meeting.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

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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 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.

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† **July 13, 1993 - 7 p.m.** – Public Hearing
Osborn High School Lecture Room, 9005 Tudor Lane, Manassas, Virginia.

† **July 14, 1993 - 7 p.m.** – Public Hearing
College of William and Mary, Millington Auditorium, Williamsburg, Virginia.

† **July 15, 1993 - 7 p.m.** – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Whitman Auditorium, Roanoke, Virginia.

July 30, 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 (Rev. HH – §§ 120-05-0601 through 120-05-0618, Standards of Performance for Regulated Medical Waste Incinerators).** The regulation amendments concern provisions covering standards of performance for regulated medical waste incinerators. The proposal will require owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. This will be accomplished through the establishment of emissions limits and process parameters based on control technology; ambient limits to address health impacts; and monitoring, testing, and recordkeeping to assure compliance with the limits. Comparison with federal requirements: No federal requirements affect the proposal; therefore, the proposal is more stringent than federal requirements. The regulation is being promulgated in the absence of a federal requirement because the 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators (MWIs) until September 1, 1993, and to require the promulgation of regulations by September 1, 1993. The legislation was proposed in response to health concerns from commercial MWI emissions. This legislation was again submitted to the General Assembly in the 1993 session, and a new version extending the original moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs) from September 1, 1993, to December 1, 1993, was passed. However, the deadline for promulgation of regulations remains September 1, 1993. Additional issues for public comment: (i) The proposed regulation provides different levels of controls and different requirements for different sizes of units. This is done because the economic burden of greater controls and requirements on smaller sources outweighs the net return of emissions reductions and environmental benefit. Generally, smaller sources do not pollute as much as larger sources; further, a large source is better capable of affording pollution control equipment. The Board seeks input on this practice–is a tiered approach to emission controls based on source size appropriate, or should the standards be uniform, for all source sizes? (ii) The proposed regulation proposes two ways in which dioxins and furans are to be controlled: a stack limit (a certain emissions level measured at the stack) and an ambient limit. The ambient limit provides an expanded view of what happens to the emissions after they have left the stack and dispersed over the local area. In the past, for most facilities emitting toxics, the ambient level has been measured at the place where the public is most likely to come in immediate contact with the emissions: at or beyond the facility's

fenceline. Some facilities, however, provide access to the general public, such as health care facilities. Other facilities may have property located relatively close to public facilities or housing. The Board seeks comment on whether the ambient dioxin/furan level should be measured at or beyond the fenceline, within the facility property, or some place else? (iii) The Board seeks specific comments on implementing the regulation relative to the overall cost of the delivery of medical services to the general public. Location of proposal: The proposal, an analysis conducted by the Department (including: a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the Department's Air Division Programs Office (Eighth Floor, Ninth Street Office Building, 200-202 North Ninth Street, Richmond, Virginia) and at any of the Department's air regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Regional offices: (i) Southwestern Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, Ph: (703) 676-5482; (ii) Valley of Virginia Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, Ph: (703) 561-7000; (iii) Central Virginia Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, Ph: (804) 582-5120; (iv) Northeastern Virginia Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, Ph: (703) 899-4600; (v) State Capital Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, Ph: (804) 323-2409; (vi) Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, Ph: (804) 424-6707; and (vii) Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Sringfield, Virginia 22150, Ph: (703) 644-0311.

STATEMENT

Purpose: The purpose of the proposed regulation is to require the owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. The proposed regulation is being adopted in response to a legislative mandate from the General Assembly.

Substance: The major provisions of the proposal are as follows: (i) establish emission limits for particulate matter, carbon monoxide, hydrogen chloride, dioxins and furans, visible emissions, fugitive dust/emissions, odor, toxic pollutants, and radioactive materials; (ii) establish incinerator unit operating parameters and practices for the minimization and removal of pollution, including temperature limitations, scrubber requirements, and operator training; (iii) establish test methods and procedures for monitoring compliance; (iv) establish specific emission and operational parameter monitoring requirements; and (v) establish notification, records and reporting requirements, including specific content and frequency information regarding measurements of opacity, emission rates, and temperatures.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the Department are as follows: (i) Public: The regulations will be an advantage to the community because they will reduce air pollution, a source of significant damage to property and health. On the other hand, in order to meet additional emission limitations, sources will need to invest substantial amounts of time, labor, and money. This may discourage a source from locating in an area, depriving an area of the source's economic and waste management benefits; and (ii) Department: Advantages to the department stemming from the regulation include better determination of compliance and monitoring, as well as a better knowledge of emissions in an affected area. In terms of cost, the regulation may be a disadvantage; additional emission limitations require additional time and staff to ensure that permits meet the applicable guidelines and that the sources follow them.

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically [10.1-1308 which authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Additionally, Chapters 773, 774, and 751 of the 1992 Acts of the General Assembly require the Board to promulgate regulations affecting regulated medical waste incinerators.

Impact: The affected facilities are all regulated medical waste incinerators except those the construction or modification of which as defined in Part VIII of the regulations commenced prior to September 1, 1993. Because this regulation affects sources yet to be constructed, it is difficult to determine the exact number of potentially affected facilities. However, it is estimated that approximately five facilities will be required to meet the operating parameters specified in the regulation within two years of its promulgation.

The estimated costs to meet the regulatory requirements for a typical commercial facility with an incineration unit rated at over 1,000 pounds per hour are about $1,126,500 for the initial capital and other costs and about $589,650 for the ongoing annual costs. Costs are in 1993 dollars.

It is not expected that the regulation will result in any cost to the Department beyond about $5,000 per year. The sources of Department funds to carry out this regulation are the general fund and the grant money provided by

EPA under Section 105 of the federal Clean Air Act.

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

Written comments may be submitted until the close of business on July 30, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240. 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 the proposal.

Contact: Karen Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

ALCOHOLIC BEVERAGE CONTROL BOARD

† **June 7, 1993 - 9:30 a.m.** – Open Meeting
† **June 21, 1993 - 9:30 a.m.** – Open Meeting
† **July 8, 1993 - 9:30 a.m.** – Open Meeting
† **July 23, 1993 - 9:30 a.m.** – Open Meeting
† **August 2, 1993 - 9:30 a.m.** – Open Meeting
† **August 16, 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, 2901 Hermitage Road, P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

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.

VIRGINIA AVIATION BOARD

† **June 8, 1993 - 10 a.m.** – Open Meeting
National Weather Service, 44087 Weather Service Road, Building 1, Sterling, Virginia.

A meeting to discuss matters of interest to aviation in Virginia.

Contact: Nancy C. Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284 or fax (804) 786-3690.

BOARD FOR BARBERS

† **June 7, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement cases; (iv) conduct regulatory review; and (v) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

VIRGINIA CANCER REGISTRY ADVISORY COMMITTEE

† **June 30, 1993 - 1 p.m.** – Open Meeting
Virginia Department of Health, Main Street Station, 1500 East Main Street, Richmond, Virginia.

The advisory committee meets annually to assess the status of the Virginia Cancer Registry. It advises the staff on broad areas of policies and goals such as data collection and reporting of data. The committee also advises on the more technical aspect of registry operations which need a consensus of opinion. The committee also serves as a liaison to member hospitals in the Commonwealth of Virginia.

Contact: Margaret G. Thompson, Director, Virginia Department of Health, Virginia Cancer Registry, Main Street Station, 1500 E. Main St., Richmond, VA 23219, telephone (804) 786-4937.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **June 25, 1993 - 10 a.m.** – Open Meeting
Middle Peninsula Planning District Commission Offices, Business Route 17, Saluda, Virginia. ♿ (Interpreter for the deaf provided upon request)

The board will conduct general business, including consideration of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. Following the business meeting, the board will take a field trip to observe agriculture practices.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or 1-800-243-7229/TDD ☎

Central Area Review Committee

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

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

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

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.

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 Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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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 Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

† **June 9, 1993 - 9:30 a.m.** – Open Meeting
† **June 10, 1993 - 9:30 a.m.** – Open Meeting
Sheraton Inn, 2350 Seminole Trail, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child care centers, camps, school age programs, and preschool/nursery schools.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

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 FOR CONTRACTORS

Applications Review Committee

† **June 22, 1993 - 9 a.m.** – Open Meeting
3600 West Broad Street, Room 395, Richmond, Virginia. ♿

A meeting to review applications with convictions and/or complaints for Class A and Class B contractor's licenses.

Contact: Florence R. Brassier, Assistant Director, 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.

BOARD FOR COSMETOLOGY

† **June 21, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

† **June 28, 1993 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A regulatory review and working committee concerning cosmetology instructors.

Contact: Karen O'Neal, Assistant Director, Board for Cosmetology, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF DENTISTRY

† **June 11, 1993 - 8:30 a.m.** – Open Meeting
† **June 18, 1993 - 8:30 a.m.** – Open Meeting
6606 West Broad Street, Richmond, Virginia. ♿

Informal conferences.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

DISABILITY SERVICES COUNCIL

† **June 17, 1993 - 2 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review the 44 local disability services boards' reports on the needs and priorities of persons with physical and sensory disabilities.

Contact: Linda Lohrman, Agency Management Lead Analyst, Virginia Department of Rehabilitative Services, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0282 or toll-free 1-800-552-5019/TDD ☎

DEPARTMENT OF EDUCATION (BOARD OF)

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.

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.

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.

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 - GOOCHLAND COUNTY

† **June 15, 1993 - 7 p.m.** – Open Meeting
General District Courtroom, Goochland Courthouse Complex, Goochland, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular semi-annual meeting of the LEPC with review of current Hazardous Materials Emergency Response Plan. Mr. Harry E. Colestock, VERC, will be present to assist with plan review.

Contact: Gregory K. Wolfrey, Emergency Coordinator, County Administrator, P.O. Box 10, Goochland, VA 23063, telephone (804) 556-5300 or (804) 556-5300/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - HANOVER COUNTY

† **June 14, 1993 - 9 a.m.** – Open Meeting
Hanover Fire Company 5, Route 1004 at Route 301 N., Hanover, Virginia ♿

A meeting to discuss the following: (i) emergency plan update and reports; (ii) update on this year's Haz-Mat transportation exercise scheduled for early fall; (iii) Hazardous Materials Transportation Uniform Safety Act (HMTUSA). Grant for Vulnerabilities study; (iv) update on sites that have been cleaned up by the E.P.A.; and (v) old business/new business, followed by a 15 minute discussion.

Contact: John F. Trivellin, Hazardous Materials Coordinator, P.O. Box 470, Hanover County, VA 23069, telephone (804) 798-8554 or 730-6195.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

† **June 8, 1993 - 3 p.m.** – Open Meeting
Montgomery County Courthouse, Main and Franklin Streets, Board of Supervisor's Room, 3rd Floor, Christiansburg, Virginia. ♿

A meeting to discuss the development of a hazardous materials emergency response plan for Montgomery County and the Town of Blacksburg.

Contact: Steve Via, New River Valley Planning District Commission, P.O. Box 3726, Radford, VA 24143, telephone (703) 639-9313, fax (703) 831-6093.

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

Work Group on Detection/Quantitation Levels

† **June 2, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, Glen Allen, Virginia.

The department's work group on detection/quantitation levels pollutants in the regulatory and enforcement programs will meet to advise the State Water Control Board. Other meetings of the work group have been scheduled, at the same time and location, for June 9, 16, 23 and 30. All dates are tentative. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5070.

VIRGINIA FIRE SERVICES BOARD

† **June 17, 1993 – 7:30 p.m.** – Public Hearing

Best Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia.

A public hearing to discuss fire training and policies. The hearing is open to the public for their input and comments.

† **June 18, 1993 - 9 a.m.** – Open Meeting
Best Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia.

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training

† **June 17, 1993 - 10 a.m.** – Open Meeting
Best Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia.

A meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control

† **June 17, 1993 - 9 a.m.** – Open Meeting
Best Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia.

A meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **June 17, 1993 - 9 a.m.** – Open Meeting
Best Western Radford Inn, 1501 Tyler Avenue, Radford, Virginia.

A meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF FORESTRY

† **June 8, 1993 - 8:30 a.m.** – Open Meeting
Appomattox-Buckingham State Forest Headquarters, Route 3, Box 133, Dillwyn, Virginia.

A general business meeting and briefing on department activities.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555/TDD

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **June 29, 1993 - 2:30 p.m.** – Open Meeting
Roanoke Civic Center, 710 Williamson Road, N.E., Roanoke, Virginia.

A board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9111.

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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 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

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.

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 ☎

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

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.

† **June 21, 1993 - 10 a.m.** – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A worksession (informal dinner at the Jefferson 7 p.m. - 9 p.m.).

† **June 22, 1993 - 9 a.m.** – Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Business meeting.

Contact: Susan R. Rowland, MPA, Assistant to the Commissioner, 1500 E. Main St., Suite 214, Richmond, VA 23219.

BOARD OF HEALTH PROFESSIONS

† **June 23, 1993 - 2 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Ad hoc committee of the board to review the regulation of Behavioral Sciences.

† **June 24, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Ad hoc committee to plan for Certification of Providers of Mental Health and Counseling Services to Sexual Assault Offenders (pursuant to SJR 339, 1993).

† **June 24, 1993 - 1 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Ad hoc committee to study the Regulatory Management of Chemically Dependent Practitioners.

Contact: Richard D. Morrison, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

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.

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

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 Blandy 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
† **July 6, 1993 - 9 a.m.** – Open Meeting
† **August 3, 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

† **June 15, 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.

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 ☎

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

† **June 21, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The tentative agenda items for consideration by the board include:

1. Permit-Required Confined Spaces for General Industry, Final Rule (1910.146) VR 425-02-92.

2. Amendments to Boiler and Pressure Vessel Rules and Regulations VR 425-01-75.

3. Amendment to Occupational Exposure to Cadmium, Final Rule (1910.1027, 1915.1027, 1928.1027) VR 425-02-90; (1926.63) VR 425-02-91.

4. Lead Exposure in Construction, Interim Final Rule (1926.62) VR 425-02-93.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Virginia Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

LIBRARY BOARD

† **June 10, 1993 - 8 a.m.** – Open Meeting
† **June 11, 1993 - 8 a.m.** – Open Meeting
Hyatt Richmond, 6624 West Broad Street, Richmond, Virginia. ♿

An annual meeting to elect officers, and discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to the State Librarian, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

LONG-TERM CARE AND AGING TASK FORCE

† **June 2, 1993 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 3, 1993 - 9:30 a.m.** – Open Meeting
Peninsula Health District, 416 J. Clyde Morris Boulevard, Newport News, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 3, 1993 - 9:30 a.m.** – Open Meeting
Lynchburg College Memorial Ballroom, 1501 Lakeside Drive, Lynchburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 4, 1993 - 9:30 a.m.** – Open Meeting
The Lincolnia Center, 4710 North Chambliss Street, Fairfax, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 4, 1993 - 9:30 a.m.** – Open Meeting
Virginia Highlands Community College, Roue 372, Abingdon, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Virginia General Assembly passed legislation to address the way long-term care and aging services are provided. As a result, the Secretary of Health and Human Resources is to develop a plan to restructure and consolidate all aging and long-term care planning, financing and service programs administered by the Virginia Department for the Aging, the Virginia Department of Health, the Virginia Department of Medical Assistance Services and the Virginia Department of Social Services. The training, coordination and collaboration among agencies that administer long-term care services and delivery at the local level for the elderly will also be addressed. To ensure the development of the plan has the input and guidance of all interested parties, the long-term care and aging task force was established. The task force will sponsor the above regional forums to receive comments on the issues under consideration. Public hearings on the plan will be held in August.

Contact: Catherine P. Saunders, Long-Term Care Council Director, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219, telephone (804) 225-2271, toll-free 1-800-552-4464 or (804) 225-2271/TDD ☎

LONGWOOD COLLEGE

Academic Affairs and Student Affairs Committee

† **June 14, 1993 - 4:30 p.m.** – Open Meeting
Longwood College, East Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, President's Office, Longwood College, 201 High Street, Farmville, VA 23909, telephone (804) 395-2001.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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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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 0Betty 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.

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)

† **June 23, 1993 - 10 a.m.** – Open Meeting
Chesterfield Community Services Board, Chesterfield, Virginia. &

A regular monthly meeting. Agenda to be published on June 16. 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, State Mental Health, Mental Retardation and Substance Abuse Services Board, 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.

DEPARTMENT OF MOTOR VEHICLES

† **June 1, 1993 - 10 a.m.** – Open Meeting
DMV Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. &

† **June 3, 1993 - 10 a.m.** – Open Meeting
Virginia Highlands Community College, LRC/Business Technical Building, Room 605, Abingdon, Virginia. &

† **June 4, 1993 - 10 a.m.** – Open Meeting
Virginia Department of Transportation, Salem District Office, 731 Harrison Avenue, Salem, Virginia. &

† **June 14, 1993 - 10 a.m.** – Open Meeting
Northern Virginia Community College, Annandale Campus, 8333 Little River Turnpike, Annandale, Virginia. &

† **June 15, 1993 - 10 a.m.** – Open Meeting
Virginia Beach Central Library, 4100 Virginia Beach Boulevard, Virginia Beach, Virginia. &

DMV Fuels Tax Representatives will conduct an informational meeting to assist affected individuals, partnerships and corporations in their understanding of the new legislative changes resulting from the 1993 session of the General Assembly. Public comments will be received at this meeting.

Contact: Julian W. Fitzgerald, Sr., Fuels Tax Division Manager, Department of Motor Vehicles, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-8116.

VIRGINIA OUTDOORS FOUNDATION

† **June 9, 1993 - 10:30 a.m.**
New Kent Forestry Center, Route 60, Providence Forge, Virginia. &

A general business meeting.

Contact: Tyson B. Van Auken, Executive Director, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5539.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

† **June 8, 1993 - 7 p.m.** – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia. & (Interpreter for the deaf provided)

An executive committee meeting.

† **June 9, 1993 - 9 a.m.** – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia. & (Interpreter for the deaf provided)

Committee meetings, followed by a meeting of the full board at 1 p.m.

Contact: David R. Dunaway, Administrative Assistant, Virginia Board for People with Disabilities, P.O. Box 613, Richmond, VA 23205-0613, telephone (804) 786-0016/TDD ☎ or toll-free 1-800-846-4464.

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.

† **June 25, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to conduct informal hearings. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, or Bernice Parker, Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7328.

BOARD OF PSYCHOLOGY

† **July 20, 1993 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A meeting to conduct general board business and consider amending regulations related to examination, application and renewal fees.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9912.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **June 10, 1993 - 10 a.m.** –Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting to include approval of contracts and grants for 1993-94, preliminary budget planning for 1994-1996, status report of grassroots planning, and updates on other items of interest.

Contact: Florence M. Strother, Acting Executive Secretary, 110 S. 7th Street, 1st Floor, Richmond, VA 23219, telephone (804) 344-5552.

REAL ESTATE BOARD

† **June 2, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A formal hearing: Real Estate Board v. Dorothy T. Smith, File No. 92-00044.

Contact: Stacie G. Camden, Legal Assistant, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA

23230, telephone (804) 367-2393.

REAL ESTATE APPRAISER BOARD

† **June 16, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A Complaints Committee meeting.

† **June 29, 1993 - 10 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

BOARD OF REHABILITATIVE SERVICES

† **June 24, 1993 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia.

A regular monthly business meeting.

Contact: Susan L. Urofsky, Commissioner, Board of Rehabilitative Services, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318 or toll-free 1-800-552-5019/TDD ☎

DEPARTMENT FOR RIGHTS OF VIRGINIANS WITH DISABILITIES

† **June 8, 1993 - 4 p.m.** – Public Hearing
Community Services Board, Pembroke Six, Suite 218, Virginia Beach, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 8, 1993 - 10 a.m.** – Public Hearing
Eastern State Hospital, Ironbound Road, Multipurpose Room, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 9, 1993 - 4 p.m.** – Public Hearing
Richmond Cerebal Palsy Center, 1308 Sherwood Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 10, 1993 - 1 p.m.** – Public Hearing
Northern Virginia Mental Health Institute, 3302 Gallows Road, Falls Church, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 10, 1993 - 6 p.m.** – Public Hearing
Independence Center of Northern Virginia, 2111 Wilson Boulevard, Suite 400, Arlington, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 21, 1993 - 6 p.m.** – Public Hearing
Southwestern Virginia Mental Health Institute, 502 East Main Street, Marion, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 22, 1993 - 2:30 p.m.** – Public Hearing
Blue Ridge Independent Living Center, 1502 Williamson Road, N.E., Roanoke, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **June 23, 1993 - 1 p.m.** – Public Hearing
Mary Switzer Building, Woodrow Wilson Rehabilitation Center, Anderson Room, Fishersville, Virginia. ♿ (Interpreter for the deaf provided upon request)

An opportunity for public comment on (i) an overview of DRVD functions; (ii) a DRVD prioritization plan; and (iii) a statement of DRVD goals and objectives/activities which are currently being employed.

Contact: Steve K. Waldron, Policy Analyst, 101 N. 14th St., 17th Floor, Richmond, VA 23219, telephone (804) 225-2042.

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. ♿

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.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

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.

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 Friedenberg, 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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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.

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 Friedenberg, Legislative Analyst, Department of Social Services, Office of Governmental Affairs, 730 E. Broad St., 8th Floor, Richmond, VA 23219, telephone (804) 692-1820.

BOARD 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.

VIRGINIA VETERANS CARE CENTER

Board of Trustees

† **June 10, 1993 - 3 p.m.** – Open Meeting
The Virginia Veterans Care Center, 4550 Shenandoah Avenue, Roanoke, Virginia. ♿

A quarterly meeting of the Board of Trustees, to review center operations and adopt necessary policies for its operation.

Contact: John T. Plichta, Executive Director, P.O. Box 6334, Roanoke, VA 24017-0334, telephone (703) 857-6974.

BOARD OF VETERINARY MEDICINE

† **June 1, 1993 - 8:30 a.m.** – Open Meeting
George Washington Inn and Conference Center, 500 Merrimac Trail, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A board meeting to conduct general board business.

† **June 1, 1993 - 10 a.m.** – Public Hearing
George Washington Inn and Conference Center, 500 Merrimac Trail, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

In response to the requirement for biennial review, in keeping with § 9-6.14:1 of the Code of Virginia, and § 1.2 D of the board regulations, public comments on the board regulations will be accepted between 10 a.m. and noon.

† **June 2, 1993 - 9 a.m.** – Open Meeting
George Washington Inn and Conference Center, 500 Merrimac Trail, Williamsburg, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences; state board examinations for veterinarians.

Contact: Terri H. Behr, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197.

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 RACING COMMISSION

† **June 8, 1993 - 9:30 a.m.** – Open Meeting
VRS Building, 1200 East Main Street, Richmond, Virginia. ♿

A regular commission meeting including a discussion of the proposed regulations relating to medication and satellite facilities.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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 BOARD FOR THE VISUALLY HANDICAPPED

† **July 28, 1993 - 2 p.m.** – Open Meeting
397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting to receive reports from the department staff and other information that may be presented to the board.

Contact: Joseph A. Bowman, Assistant Commissioner, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

† **July 7, 1993 - 10 a.m.** – Public Hearing
James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on February 17, 1993, and the most recent supplement to that Formulary. Copies of the proposed revisions to the Formulary are available for inspection at the Virginia Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on July 7, 1993, will be made a part of the hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

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.

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† **July 13, 1993 - 7 p.m.** – Public Hearing
Osborne High School, 9005 Tudor Lane, Lecture Room, Manassas, Virginia.

† **July 14, 1993 - 7 p.m.** – Public Hearing
College of William and Mary, Landrum Drive, Millington Auditorium, Williamsburg, Virginia.

† **July 15, 1993 - 7 p.m.** – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Whitman Auditorium, Roanoke, Virginia.

July 30, 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 Virginia Waste Management Board intends to amend regulations entitled: **672-40-01. Regulated Medical Waste Management Regulations.** The proposed amendments add flexibility in optional treatment methods and make several technical adjustments to the current regulations.

STATEMENT

Purpose: The purpose is to amend those regulations that establish standards and procedures pertaining to infectious waste management (regulated medical waste management) in this Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources.

Basis: The Virginia Waste Management Board is authorized to supervise and control waste management activities by the Virginia Waste Management Act as set out in Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Substance and issues: The Virginia Waste Management Board adopted rules and regulations, titled Infectious Waste Management Regulations, on November 2, 1989. The regulations were entirely new and regulate the management of infectious waste by those who generate, treat, store, transport or dispose of it. These regulations went into effect on May 2, 1990. Having administered these regulations for two years, several areas have been found where the regulations can be improved to effect more efficient, less costly, and simpler management practices by the regulated community and to provide more flexibility in waste management options. These improvements are incorporated into an amendment to the regulations, including a change in the name of the regulations to Regulated Medical Waste Regulations.

The term infectious waste was used in 1986 by the U. S. Environmental Protection Agency to describe the 5.0% to 15% of the waste streams from medical facilities that require more prudent care. Since then, the term regulated medical waste, or very similar terms, has been used in at least three major federal regulations and many state regulations. This nomenclature is more appropriate since it may cover waste managed differently for aesthetic or safety reasons, and does not necessarily imply that the waste has an infectious nature. The amendment substitutes regulated medical for infectious in all instances.

Current regulations give a partial exemption from the more intrusive parts of the regulations to private offices of health care providers and practice in the home of the patient. Small institutional practices are not ineligible for the exemption. The amendment defines limited small clinics to include these small institutional practices and encompasses them in the partial exemption.

Permits in the current regulations are given by either the formal (review and approve) process or "by rule" (qualify and register). The home offices of nurses who provide home health care and similar practitioners cannot qualify for a permit by rule. The amendment of the regulations defines nonstationary health care provider and allows for a collection point serving those providers to qualify for a permit by rule.

The regulations did not address the subject of reusable containers for management of the waste. The amendment sets out standards to require that reusable containers be cleaned and disinfected between uses.

The current regulations allow only incineration and steam sterilization for treatment methods. Treated waste could be disposed of whole as solid waste; therefore, some items, like hypodermic syringes, could still be picked from the treated waste and used by scavengers. The amendment

adds small scale heat treatment, microwave treatment and chlorination treatment to the list of approved alternative treatment processes. All nonincineration processes require grinding, shredding or other treatment to render the waste unrecognizable. A panel is established to review other innovative treatment technologies and recommend action to the Director, who may approve variances for the new alternative treatment methods to be used at specific sites.

The amendment allows for shipment of waste via the U. S. Postal Service for treatment and disposal. This change was included because there is a great demand for this method among small generators and revised postal rules now adequately address the practice. Several other administrative and procedural changes are made by the amendment. Nearly all permit processing procedures and petitioning procedures are deleted, and cross references direct the applicant to the Solid Waste Management Regulations for those procedures. These administrative changes make the regulations simpler and clearer.

Estimated impact:

Projected Savings to Regulated Community

The amendments will reduce costs of compliance for the regulated community. Permitting is simplified and deferred to existing solid waste management procedures. In most instances, permitting will be by rule rather than review. The delays and costs of the application process will be saved.

Easier compliance with the regulations in limited small clinics and nonstationary health care providers will allow for more efficient operation and directed savings from lower disposal fees as loads are consolidated. Transportation and storage without refrigeration during the first seven days will reduce costs of management for generators, simplify equipment for some transporters, and better fit into normal business practice. Alternative treatment technologies reduce the costs of treating the waste on-site, reducing treatment and transportation expenses for hospitals. Costs for grinding or shredding may off-set these savings somewhat at existing autoclave facilities.

While the cost of the above savings cannot be predicted accurately, one regulatory change will provide almost immediate and substantial savings. Presuming 5,000 generators take advantage of the mail-back disposal option allowed in the amendments, they may reduce weekly disposal costs from about $25 to $10. If these numbers are realized, the savings would be $3,900,000 per year. The savings for the regulated community from all the amendments could exceed $5,000,000 and represent a clearer, simpler, and more efficient compliance effort.

Projected Cost to Commonwealth

The Department of Environmental Quality is implementing and enforcing the current regulations. The proposed amendments provide alternate treatment methods to incineration and steam sterilization, which are allowed by current regulations. While the number of commercial, off-site facilities is not expected to increase greatly, the number of on-site facilities at hospitals and similar facilities may increase. The proposed changes for non-stationary health care providers may also cause formation of new on-site facilities for storage or treatment. These facilities are likely to be permitted by rule rather than through a formal review and permit process. The Department would not experience an increase in personnel time for review. The propose changes for non-stationary health care providers may cause formation of new on-site facilities for storage or treatment. Enforcement personnel would experience an increase in workload due to an increased number of facilities. The Department may incur some cost related to staffing the new Innovative Technology Review Panel and support of the technology approval process.

No substantial increase in costs to the Department for implementing and enforcing these amendments is expected. If costs do develop, they should be easily minimized and accounted in the regular biennial budget process for solid waste management.

Number and Type of Regulated Entities

The following number of regulated entities reflect totals listed with licensing agencies. Some may not practice or practice as part of an institution or group practice. There may be small clinics in schools, factories and similar facilities that have occasional minor amounts of regulated medical waste.

Hospitals, outpatient clinics, laboratories, hospices, rehabilitation centers, dialysis centers and home health agencies 605

Nursing homes and intermediate care of mentally retarded 141

Correctional facility clinics 40

Mental health centers 13

Medical examiner centers 4

Federal hospitals and treatment centers 27

Funeral homes 487

Animal Hospitals and Veterinarians 1,988

Dentists 3,573

Physicians and surgeons 13,370

Nurse practitioners 1420

Comparison With Federal Requirements

No federal requirements affect the proposal; therefore, the proposal is more stringent than federal requirements. The regulation is being promulgated in the absence of federal requirements because the 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators until September 1, 1993. The legislation was proposed in response to health concerns from commercial medical waste incinerators. This legislation was again submitted to the General Assembly in the 1993 session, and a new version, extending the original moratorium for issuance of permits for commercial medical waste incinerators from September 1, 1993 to December 1, 1993, was passed. However, the deadline for promulgation of regulations remains September 1, 1993.

Other information: The board, in this first amendment to the regulations, intends to improve the regulations through several changes. It wishes to direct attention to certain issues for which the board expressly desires the help and opinion of the public. The board is seeking comments that include explanation, suggested regulatory language, data and basis for the comment. Prior to taking action on final regulations, the board wishes to have a full review and thorough discussion of these and any issues citizens feel are important. Attention to the following issues is specifically requested:

1. § 2.4. and elsewhere requires that existing facilities comply with the regulations immediately, except where the existing permit contains a conflict with the amended regulations, the conflicting permit condition may be used for six months. Is this time period appropriate and practical, or should another period or procedure be substituted.

2. § 2.7. establishes minimum membership to a panel reviewing innovative technologies for treating regulated medical waste. Is the makeup of the panel appropriate; are there others who should participate?

3. Are there units, like limited small clinics, which should be eligible for the partial exemption at subdivision 5 of § 3.2? Are there other aspects of the regulations to which exemptions should accrue through this item?

4. Do the specific references § 4.7 provide adequate control of radiological materials at treatment facilities? Are there specific standards or means which might improve protection from these materials?

5. The new standard in Parts V and VI for nonrefrigerated storage of regulated medical waste is seven days after generation. Is this time period too short of too long?

6. In Part IV, treatment methods and package marking for pathological waste differ from other regulated medical waste; is this appropriate? The amendment removes the requirement to use orange packaging for waste to be sterilized. Is this change appropriate, or should the regulations retain orange color coding of waste to be treated?

7. The regulations, in Parts VII, IX, and X contain certain new standards, for example grinding of regulated medical waste and testing of treatment equipment for alternative technologies. Three new treatment technologies are approved with specific standards. The board would like comment on those standards and detailed specific recommendations for other requirements that are appropriate.

8. The amended regulations require incinerator ash and pollution control dust to be segregated and tested separately. Should the regulations allow the mixing of the ash and dust after testing is complete? Should the mixing be allowed on-site prior to shipment of disposal?

The General Assembly directed the board to consider nine factors in developing the regulations. The board would like the public to suggest any ways the regulations could better address the following nine factors:

1. An assessment of the annual need for the disposal of infectious waste generated in the Commonwealth.

2. Means of reducing the volume of infectious waste similar wastes containing or producing toxic substances disposed of in the Commonwealth.

3. The availability and feasibility of methods of disposing of infectious waste other than incineration.

4. Criteria for siting infectious waste incinerators in order to safeguard public health and safety to maximum extent.

5. Standards for assessing the economic feasibility of proposed commercial infectious waste incinerators.

6. The propriety of establishing different criteria and procedures for the permitting of incinerators disposing of infectious waste generated on-site or off-site.

7. The economic demand for the importation of infectious waste generated outside the Commonwealth to existing and future commercial infectious waste incinerators located in the Commonwealth, and an estimate of the fair share of infectious capacity to be allowed for infectious waste generated outside the Commonwealth.

8. The impact of the Clean Air Act (42 U.S. C § 1857 et seq.), as amended by the 1990 amendments (P.L. 101-549) on the incineration of infectious waste by hospitals.

The impact of reports by the Environmental Protection Agency to the Congress of the United States

regarding the Medical Waste Tracking Act of 1988 (P.L. 100-582).

In addition to the issues and factors listed above, the board welcomes comments on all parts of the proposed amendment. In order to be most helpful, comments need to be very specific and make detailed suggestions for alternative requirements or wording. Support data and related information, of which the board may not be aware,, will greatly aid the board in reaching a decision.

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

Contact: Robert G. Wickline, Director of Research, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

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

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 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.

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 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.

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.

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.

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 Associates 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.

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.

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.

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 680-14-19. 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.

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.

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.

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.

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

AUDITOR OF PUBLIC ACCOUNTS

† **June 1, 1993 - 10 a.m.** – Public Hearing
National Guard Armory, Franklin Street, Christiansburg, Virginia.

† **June 8, 1993 - 3:35 p.m.** Public Hearing
Cascades Inn, Visitor Center Drive, Williamsburg, Virginia.

Public hearings to receive public comments on the draft revision of the "Specifications for Audits of Counties, Cities and Towns." Individuals planning to attend or make a presentation at one of these hearings are requested to complete a registration form available from the Auditor of Public Accounts. There is no charge to attend the public hearings.

The discussion document applies only to county, city and town audits. The Auditor of Public Accounts will release a discussion document for audits of authorities, boards and commissions at a later date.

Copies of the draft may be obtained at no charge by writing to the address below. Local government officials, auditors, and other interested parties are encouraged to provide written comments to the address below. The comment period will close on June 15, 1993.

Contact: Specifications for Audits, Auditor of Public Accounts, P.O. Box 1295, Richmond, VA 23210, telephone (804) 225-3350.

JOINT SUBCOMMITTEE STUDYING CRIME AND VIOLENCE PREVENTION THROUGH COMMUNITY ECONOMIC STIMULATION AND DEVELOPMENT

† **June 8, 1993 - 1:30 p.m.** –Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

The subcommittee will meet for the purpose of an organizational meeting. HJR 593.

Contact: Oscar R. Brinson, Staff Attorney, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE NEEDS OF FOREIGN-BORN INDIVIDUALS IN THE COMMONWEALTH

† **June 28, 1993 - 1 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 660.

Contact: Gayle Vergara, Research Associate, Division of Legislative Services, 910 Capitol Street, Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA HOUSING STUDY COMMISSION

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 LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **June 14, 1993 - 9:30 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Appropriations Committee Room, 9th Floor, Richmond, Virginia.

Auditor of Public Accounts workplan briefing; VRS/RF&P subcommittee.

Contact: Phil Leone, General Assembly Building, 910 Capitol Square, Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

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.

VIRGINIA CODE COMMISSION

† **June 16, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

The commission will conduct a preproposal conference on the Request for Proposal for the compilation and of state agency regulations, and publication of an official Virginia Administrative Code.

Contact: Joan W. Smith, Virginia Code Commission, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

June 1
Higher Education for Virginia, State Council of
Hopewell Industrial Safety Council
† Motor Vehicles, Department of
† Veterinary Medicine, Board of

June 2
Health, Department of
Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
Local Emergency Planning Committee - Winchester
† Long-Term Care and Aging Task Force
† Real Estate Board
Sewage Handling and Disposal Appeals Review Board
Vehicles Powered by Clean Transportation Fuels, Joint Subcommittee Continuing the Study of
† Veterinary Medicine, Board of

June 3
Local Emergency Planning Committee - Chesterfield County
† Long-Term Care and Aging Task Force
Medicine, Board of
† Motor Vehicles, Department of
Water Control Board, State

June 4
† Agriculture and Consumer Services, Department of
- Virginia Aquaculture Advisory Board
† Air Pollution Control Board, State
† Long-Term Care and Aging Task Force
Medicine, Board of
- Credentials Committee
Mental Health, Mental Retardation and Substance

Abuse Services, Department of
- State Human Rights Committee
† Motor Vehicles, Department of

June 5
Medicine, Board of

June 6
Medicine, Board of

June 7
† Alcoholic Beverage Control Board
Arts, Virginia Commission for the
† Barbers, Board for
Human Immunodeficiency Viruses, Joint Subcommittee Continuing the Study of the Issues, Policies, and Programs Relating to Infection with
Polygraph Examiners Advisory Board

June 8
† Aviation Board, Virginia
† Crime and Violence Prevention Through Community Economic Stimulation and Development, Joint Subcommittee Studying
† Forestry, Board of
Higher Education for Virginia, State Council of
† Local Emergency Planning Committee - County of Montgomery/Town of Blacksburg
† People with Disabilities, Virginia Board for
† Virginia Racing Commission
Virginia Resources Authority

June 9
† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
† Air Pollution, State Advisory Board on
† Child Day-Care Council
Contractors, Board for
- Complaints Committee
† Outdoors Foundation, Virginia
† People with Disabilities, Virginia Board for
Soil Scientists, Board for Professional

June 10
Governor's Advisory Board on Aging
† Library Board
† Public Telecommunications Board, Virginia
† Veterans Care Center, Virginia
- Board of Trustees

June 11
Governor's Advisory Board on Aging
† Dentistry, Board of
† Library Board

June 14
Intergovernmental Relations, Advisory Commission on
† Joint Legislative Audit and Review Commission
† Local Emergency Planning Committee - Hanover County
† Longwood College
- Academic Affairs and Student Affairs Committees
† Motor Vehicles, Department of

June 15
† Housing Development Authority, Virginia
† Local Emergency Planning Committee - Goochland County
† Motor Vehicles, Department of
Waterworks and Wastewater Works Operators

June 16
Contractors, Board for
Historic Resources, Department of
- State Review Board and Board of Historic Resources
† Real Estate Appraiser Board
Waterworks and Wastewater Works Operators

June 17
† Disability Services Council
† Fire Services Board, Virginia
- Fire/EMS Education and Training
- Fire Prevention and Control
- Legislative/Liaison Committee
Game and Inland Fisheries, Board of
Waste Management Board, Virginia
Water Control Board, State

June 18
† Dentistry, Board of
† Fire Services Board, Virginia
Game and Inland Fisheries, Board of
Interdepartmental Regulation on Children's Residential Facilities
- Coordinating Committee
Professional Counselors, Board of

June 21
† Alcoholic Beverage Control Board
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Cosmetology, Board for
† Health, State Board of
† Labor and Industry, Department of
- Safety and Health Codes Board

June 22
† Agriculture and Consumer Services, Department of
- Marine Products Board
† Contractors, Board for
† Health Services Cost Review Council, Virginia
† Health Professions, Board of
Violent Crime, Governor's Commission on

June 23
† Health Profession, Board of
Historic Resources, Board of
† Mental Health, Mental Retardation and Substance Abuse Services, State Board

June 24

Education, Board of
† Health Professions, Board of
Medical Assistance Services, Department of
- Drug Utilization Review Board
† Rehabilitative Services, Board of
Water Control Board, State

June 25
† Agriculture and Consumer Services, Department of
- Virginia Egg Board
† Chesapeake Bay Local Assistance Board
† Professional Counselors, Board of

June 28
† Cosmetology, Board for
† Foreign-Born Individuals in the Commonwealth, Joint Subcommittee Studying the Needs of

June 29
† Funeral Directors and Embalmers, Board of
† Real Estate Appraiser Board

June 30
Agriculture and Consumer Services, Board of
† Cancer Registry Advisory Committee, Virginia
Chesapeake Bay Local Assistance Board
- Central Area Review Committee

July 1
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee

July 6
† Agriculture and Consumer Services, Department of
- Winegrowers Advisory Board
† Hopewell Industrial Safety Council

July 8
† Alcoholic Beverage Control Board

July 20
† Psychology, Board of

July 23
† Alcoholic Beverage Control Board

July 21
Waterworks and Wastewater Works Operators, Board for

July 28
† Visually Handicapped, Board for the

August 2
† Alcoholic Beverage Control Board

August 3
† Hopewell Industrial Safety Council

August 16
† Alcoholic Beverage Control Board

PUBLIC HEARINGS

June 1
† Auditor of Public Accounts
Child Day-Care Council
Social Services, State Board of
† Veterinary Medicine, 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 8
† Auditor of Public Accounts
† Rights of Virginians with Disabilities, Department for

June 9
† Rights of Virginians with Disabilities, Department for

June 10
Housing Study Commission, Virginia
† Rights of Virginians with Disabilities, Department for
Transportation, Department of

June 15
Water Control Board, State

June 17
† Fire Services Board, Virginia

June 21
† Rights of Virginians with Disabilities, Department for
Water Control Board, State

June 22
† Rights of Virginians with Disabilities, Department for
Water Control Board, State

June 23
† Rights of Virginians with Disabilities, Department for
Water Control Board, State

June 24
Education, State Board of

June 30
Agriculture and Consumer Services, Board of
Water Control Board, State

July 7
Virginia Voluntary Formulary Board

July 13
† Air Pollution Control Board, State
† Waste Management Board, Virginia

July 14
† Air Pollution Control Board, State
† Waste Management Board, Virginia

July 15
† Air Pollution Control Board, State
† Waste Management Board, Virginia