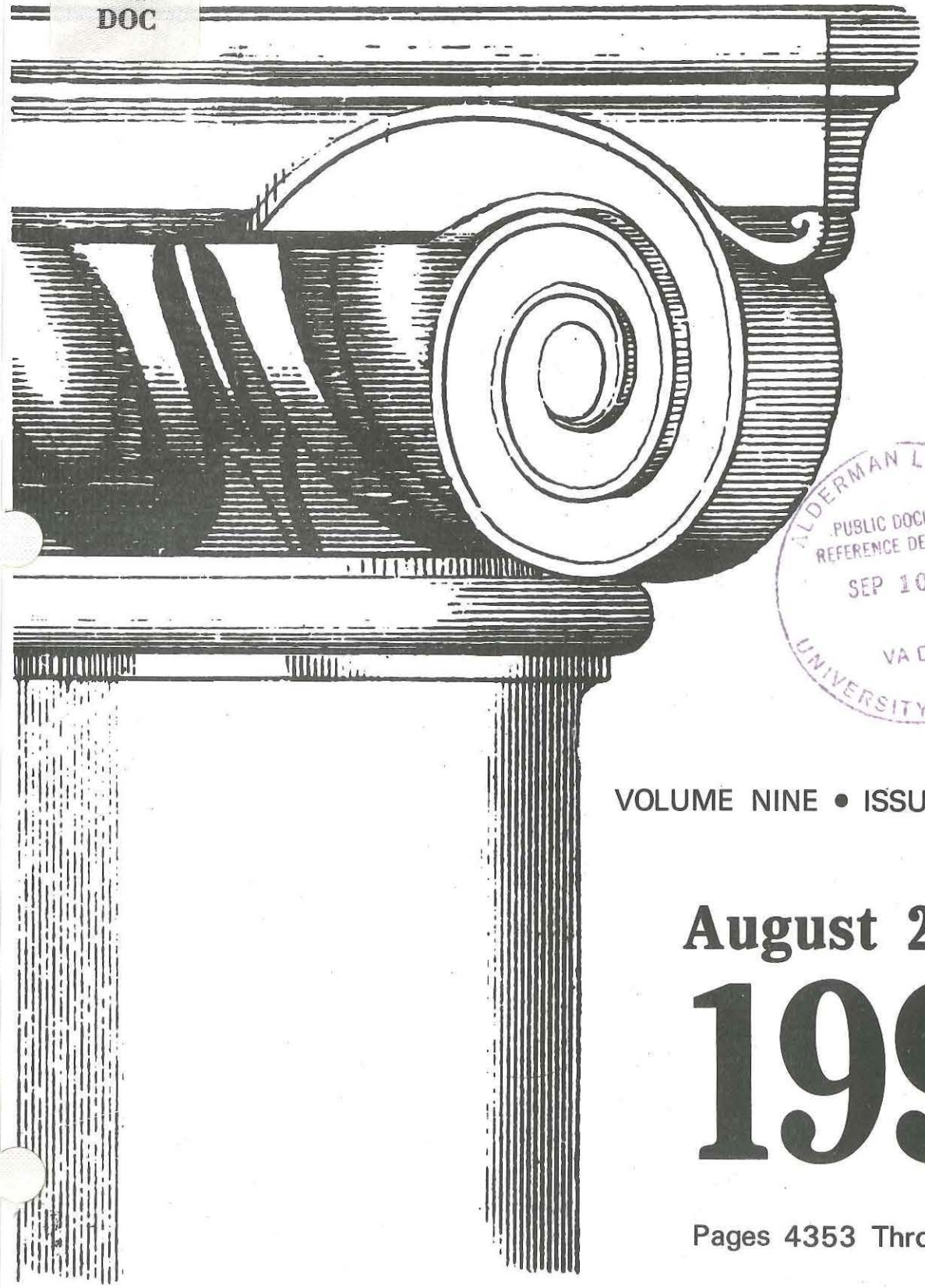
THE VIRGINIA REGISTER

OF REGULATIONS



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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

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January 1993 through April 1994

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† Indicates entries since last publication of the Virginia Register

BOARD FOR ACCOUNTANCY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider repealing regulations entitled: **VR 105-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed repeal of this regulation.

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

Written comments may be submitted until September 1, 1993.

Contact: Roberta L. Banning, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

VA.R. Doc. No. C93-1716; Filed July 2, 1993, 11:59 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to consider promulgating regulations entitled: **VR 105-01-1:1. Board for Accountancy Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace emergency regulations adopted June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 1, 1993.

Contact: Roberta L. Banning, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

DEPARTMENT FOR THE AGING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Aging intends to consider amending regulations entitled: **VR 110-01-02. Grants to Area Agencies on Aging.** The purpose of the proposed action is to review the regulation to determine whether new regulations should be adopted, the current regulation should be amended, and sections of the current regulation should be repealed. The department does not intend to hold a public hearing after the proposed regulation is published. The department does not anticipate making substantive changes to the current regulations.

Statutory Authority: § 2.1-373(a)(7) of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: J. James Cotter, Director, Division of Program Development and Management, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-4464.

VA.R. Doc. No. C93-1938; Filed July 21, 1993, 10:01 a.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Pesticide Control Board

† Withdrawal of Notices of Intended Regulatory Action

The Pesticide Control Board has withdrawn the following Notices of Intended Regulatory Action concerning regulatory actions to amend VR 115-04-20, Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act, published in 7:19 VA.R. 2929 June 17, 1991, and 7:24 VA.R. 3945 August 26, 1991.

VA.R. Doc. No. C93-2037; Filed August 2, 1993, 2:35 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider amending regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The purpose of the proposed action

is to review the regulation for effectiveness and continued need including, but not limited to (i) establishing a single product registration fee; (ii) establishing a deadline for registering pesticide products each year and to assess a late fee for pesticide products registered after the deadline; and (iii) deleting the provisions allowing a commercial applicator or a registered technician, in lieu of paying a penalty, to submit an affidavit certifying that he has not applied pesticides classified for restricted use subsequent to the expiration of his certificate. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof. The agency plans to hold a public hearing on the proposed regulation after it is published.

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

Written comments may be submitted until 8:30 a.m. on September 23, 1993.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558.

VA.R. Doc. No. C93-1995; Filed August 2, 1993, 2:35 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider amending regulations entitled: **VR 115-04-21. Public Participation Guidelines.** The purpose of the proposed action is to review the regulation for effectiveness and continued need. The agency invites comment on whether there should be an advisor appointed for the present regulatory action. An advisor is (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof. The agency plans to hold a public hearing on the proposed regulation after it is published.

Statutory Authority: §§ 3.1-249.30 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until 8:30 a.m. on September 13, 1993.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23219, telephone (804) 371-6558.

VA.R. Doc. No. C93-1840; Filed July 16, 1993, 10:15 a.m.

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution. (Rev. HH)** The purpose of the proposed action is to amend the regulations concerning standards of performance for new and expanding industry to address concerns relating to requirements for regulated medical waste incinerators.

Public meeting: A public meeting will be held by the Department in the Board Room, State Water Control Board Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 10:00 A.M. on August 25, 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.

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 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 about 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.

Although the Virginia Waste Management Board has promulgated regulations regarding the storage, transportation, and disposal of regulated medical wastes, the Virginia State Air Pollution Control Board has not promulgated air pollution permit regulations specifically addressing MWIs. State and federal air quality regulations governing incineration in general and municipal waste combustors in particular do exist, but none specifically address MWIs.

The General Assembly passed legislation directly addressing MWIs for a number of reasons:

1. The State Air Pollution Control Board had not promulgated air pollution permit regulations specifically addressing medical waste incinerators.

2. The State Air Pollution Control Board had issued permits for approximately 17 hospital regulated medical waste incinerators and one commercial regulated medical waste incinerator during the preceding two years.

3. The total regulated medical waste generated in the Commonwealth averaged between 35 and 45 tons per day. Currently, sufficient capacity within the Commonwealth to dispose of such waste may exist.

4. The incineration of regulated medical waste generates toxic or trace metals, dioxins and furans, acid gases, particulate matter, and pathogens, which may adversely affect human health and the environment.

Alternatives:

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option would meet the stated purpose of the regulation: to limit emissions of certain air pollutants to a specified level necessary to protect public health and welfare. This, then, will accomplish the specific objectives of the law.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option would not necessarily meet the stated purpose of the regulatory action; further, alternative regulatory changes could also go beyond the stated purpose by imposing requirements that may not be consistent with the General Assembly's wishes.

3. Take no action to amend the regulations and continue to regulate regulated medical waste incinerators under existing air quality programs. This option would not accomplish the goals of the law or the agency, nor would it accomplish the stated purpose of the regulatory action.

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

Applicable statutory requirements: Legislation passed by the 1993 General Assembly imposes a moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs). An MWI is considered "commercial" if more than 25% of the waste it burns is generated off site. "Infectious waste" (i.e., regulated medical waste) is defined as solid waste with the potential to cause infectious disease in humans. The law states, "No permits for the construction, reconstruction, or expansion of a commercial infectious waste incinerator shall be issued or approved by the State Air Pollution Control Board or the Virginia Waste Management Board prior to December 1, 1993; and no such permits shall be reviewed or processed by the Boards prior to September 1, 1993." Existing and proposed noncommercial MWIs, and existing commercial MWIs are not affected.

The law further states, "The State Air Pollution Control Board and the Virginia Waste Management Board shall each promulgate regulations with respect to the permitting of infectious waste incinerators by September 1, 1993, or as soon as practicable thereafter within the constraints of the Administrative Process Act (§ 9-6.14:1 et seq.)." Factors to be considered by both boards include:

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 and 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 the maximum extents;

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 incinerator 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; and

9. 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)."

To address these issues, a study working group consisting of Department of Environmental Quality (DEQ) Air and Waste Division staff and the public (including representatives from industry, environmental groups, general public, and the Virginia Department of Health) was established. The group determined each factor's relevance to the regulatory responsibilities of the State Air Pollution Control Board and the Waste Management Board. It was agreed that the factors pertaining to the economics of commercial regulated medical waste incineration (items 1, 5, and 7) were not within the purview of either board to adopt as regulatory performance standards or siting criteria. It was also determined by the group that items 2, 3, 4, 6, and 9 were waste management issues more appropriately studied by the Waste Division, while item 8 was an air quality issue best reviewed by the Air Division. Study results were presented to the General Assembly in

January 1993.

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

Written comments may be submitted until close of business September 6, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Karen G. Sabasteanski, Policy Analyst, Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

VA.R. Doc. No. C93-1783; Filed July 7, 1993, 9:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Federal Operating Permits for Stationary Sources - Rev. JJ).** The purpose of the proposed action is to develop a regulation to meet the requirements of Title V of the Clean Air Act, as amended in November 1990.

Public meeting: A public meeting will be held by the department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10:00 a.m. on August 25, 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.

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: Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The States are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The operating permits issued under this program should enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing States with permit fees to support their programs.

Source surveillance activities are those activities undertaken by air pollution control agencies to monitor and determine the compliance status of polluting facilities.

The current new source permit program provides that owners of certain new stationary sources and certain modifications of existing stationary sources must obtain a permit to construct and operate that source. The permit sets out enforceable operating and emission control requirements for the facility and is done one time only, unless an additional new source or modification necessitates a new application. Permits have been issued for facilities in Virginia since 1972.

The current operating permit program provides that owners of new and existing sources that would not be exempt under the new and modified source exemption levels must obtain an operating permit every five years to continue to operate the source. The permit sets out enforceable operating and emission control requirements for the facility, such as emission limits, processes or operations covered by the permit, limits on hours of operation and process rates, legal obligations and rights accompanying issuance of the permit, maximum permit renewal period, and limits on transferability. Permits can also specify reporting requirements, compliance dates, monitoring requirements, operation and malfunction provisions, and other appropriate factors relating to the operation of the source and enforcement of the permit conditions.

These new source review and operating permit programs provide benefits for the department, those who must obtain permits and the general public. A permit sets out for both the department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the department has an agreement with the owner through the permit that these requirements will be carried out. It enables the department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all applicable state and federal regulations. The operating permit program provides that both the department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

At all facilities, operating conditions change over time, new technologies become available, and new regulatory requirements are developed that may necessarily change original permit conditions. Operating permits provide a mechanism to adapt to these changing conditions. The benefits of an operating permit program discussed above are enhanced source surveillance capability for the department and clearer regulatory ground rules for owners and operators of facilities emitting air pollution. Other benefits to the regulated community of an operating permit program are described below.

Owners of sources subject to compliance programs through new regulatory initiatives or other air quality planning requirements must sign a consent order which is, in effect, an agreement between the department and the owner for the source to meet those initiatives or requirements. An operating permit program supplants the use of consent orders under these conditions and removes the negative connotation that comes with signed consent orders. Consent orders are generally used after a facility has been found in violation of the regulations when the department needs an enforceable administrative mechanism to ensure that the facility's operation will change to avoid a violation in the future.

Current federal requirements mandate that allowable emissions of existing sources be used in air quality analyses associated with the new source permit program and air quality planning requirements. For sources that do not have a permit under the current new source review program, allowable emissions must be based on the maximum emissions legally allowed, even if it is impossible or unlikely that such levels could be achieved. In some cases, an existing source has been found to cause, by itself, concentration levels that exceed the federal standard for a criteria pollutant such as sulfur dioxide. Without some means to legally restrict the hours of operation, the additional emissions must be counted. An operating permit program enables the department to permit facilities at emission levels closer to actual emission levels with a reasonable margin for normal operation. At present, there is often a disparity between the actual emissions a facility produces and those allowed by emission limits.

Current federal policy allows the use of emissions trading activities by sources to meet emission standards in a more cost effective manner. These activities include bubbling, netting, offsetting and banking. The operating permit provides a mechanism for implementing and enforcing emissions trading activities, provided EPA policy or a state generic policy, as appropriate, is followed. Currently these activities are enforced using consent orders which, as explained above, have a negative connotation.

An operating permit provides the mechanism for the department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations. The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the department.

Alternatives: In a general sense, the most basic regulatory alternative is either to develop a regulation to satisfy the provisions of Title V of the Clean Air Act and 40 CFR Part 70 or to decide that EPA will carry out the provisions of this part of the Clean Air Act in Virginia. The regulatory alternatives considered below are specific to some of the options available to the board under the provisions of the Act and applicable federal regulations.

1. Applicability

a. Extend the applicability of the regulation only to major sources as defined in Title V.

b. Expand the regulation beyond the provisions of the Clean Air Act to cover sources in addition to those defined as major by Title V.

2. Operational flexibility

As specified in the preamble to 40 CFR Part 70 and below, alternatives (i) and (iii) must be provided for in the state's operating permit program under Title V; alternative (ii) may be included in the program.

(i) Allow certain narrowly defined changes within a permitted facility that contravene specific permit terms without requiring a permit revisions, as long as the source does not exceed the emissions allowable under the permit.

(ii) Allow emissions trading at the facility to meet SIP limits where the SIP provides for such trading on seven days notice in cases where trading is not already provided for in the permit.

(iii) Provide for emissions trading for the purposes of complying with a federally enforceable emissions cap established in the permit independent of or more strict than otherwise applicable requirements.

a. Provide only for alternatives (i) and (iii) in the operating permit program.

b. Provide for alternative (ii) as well as (i) and (iii) in the operating permit program. The current Virginia SIP does not provide for an emissions trading program. An emissions trading program would have to be developed but could not be developed by November 15, 1993.

3. Permit modifications

a. Adopt the procedures EPA set out in 40 CFR Part 70, § 70.7 (e) regarding permit modifications.

b. Adopt procedures that are essentially equivalent to those set out in 40 CFR Part 70, § 70.7 (e).

4. General permits

Should the regulation provide for general permits and, if so, what process should be used, what types of

processes could or should be covered by general permits and what levels of emissions should be covered by general permits?

5. Temporary permits

Should the regulation provide for one permit to be issued for multiple temporary locations of a source, and, if so, what process should be used?

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 create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source.

Section 502 (a) requires that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.

2. Major sources, defined as follows:

a. Any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;

b. In nonattainment areas designated as serious, any source emitting 50 TPY or more (in Virginia, the northern Virginia area is designated serious for ozone); for severe or extreme nonattainment areas, sources emitting 25 and 10 TPY, respectively; and

c. Any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under section 112.

3. Any other source, including an area source, subject to a hazardous air pollutant standard under section 112.

4. Any source subject to new source performance standards under section 111.

5. Any source required to have a preconstruction review permit pursuant to the requirements of the PSD program under Title I, part C or the nonattainment area new source review program under Title I, part D.

6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

Section 502 (b) sets out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications.

2. Monitoring and reporting requirements.

3. A permit fee system.

4. Provisions for adequate personnel and funding to administer the program.

5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act.

6. Authority to issue permits for a fixed term, not to exceed five years.

7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan.

8. Authority to terminate, modify, or revoke and reissue permits for cause, which is not further defined, and a requirement to reopen permits in certain circumstances.

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than $10,000 per day, and appropriate criminal penalties.

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion.

11. Procedures for (a) expeditiously determining when applications are complete, (b) processing applications, (c) public notice, including offering an opportunity for public comment, and a hearing on applications, (d) expeditious review of permit actions, and (e) state court review of the final permit action.

12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.

13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions

of section 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

Section 503 (b) requires that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

Section 503 (d) specifies that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

Section 503 (e) requires that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection from disclosure under section 114 (c) of the Act can be submitted separately.

Section 504 specifies what is to be included in each operating permit issued under this program. Section 504 (a) requires that each permit shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

Section 504 (b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

Section 504 (c) requires that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under 504 (b). Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

Section 504 (d) allows the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

Section 504 (e) allows the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

Section 504 (f) provides a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with Section 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. The permit includes the applicable requirements of those provisions, or

2. The permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Section 503 (c) specifies that all sources required to be permitted under a Title V program are required to submit an application within 12 months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

Section 505 (a) requires the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, Section 505 (a) also

requires the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. Section 505 (b) provides for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under section 505 (d), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. Section 505 (e) allows the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

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

Written comments may be submitted until close of business August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Nancy S. Saylor, Policy Analyst, Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1249.

VA.R. Doc. No. C93-1786; Filed July 7, 1993, 9:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Permit Program Fees - Revision KK)** . The purpose of the proposed action is to develop a regulation to meet the permit program fee requirements of Title V of the Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Public meeting: A public meeting will be held by the department in House Committee Room One, State Capitol Building, Richmond, Virginia, at 10 a.m. on Wednesday, August 25, 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.

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: Title V of the Clean Air Act (the Act) as amended November 1990, provides a mechanism to implement the various requirements under the other titles in the act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

One of the requirements of Title V is for states to develop permit fee programs to use in funding the costs of developing, implementing and enforcing the other requirements of Title V. The permit fees obtained should fund the resources necessary for states to carry out their programs. The basis of the required permit fees is a charge per ton of emissions of regulated pollutants emitted by stationary sources covered under Title V. While the permit fee program provides a benefit to state agencies, the program also provides other benefits related to air quality. Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible. The charging of permit fees also more directly allows the costs of the air quality programs to be paid for by those who create the pollution, rather than indirectly through the state taxation system.

Alternatives: Generally, the most basic regulatory alternative is either to amend the regulation to satisfy the provisions of Title V of the Clean Air Act, § 10.1-1322 of the Air Pollution Control Law of Virginia and 40 CFR Part 70 or to decide that EPA will carry out the permit fee provisions of Title V of the Act in Virginia. The regulatory options and alternatives set out below more specifically pertain to the requirements of the Act, Virginia law and applicable federal regulations.

1. Program coverage.

   a. Extend the coverage of the fee program only to those major sources as defined in Title V.

   b. Extend the coverage of the fee program to sources other than those covered in Title V.

2. Emissions fee approach.

   a. Provide for a graduated fee program so that the greater the emissions of each regulated pollutant, the higher the fee would be.

   b. Provide for a straight-line fee program so that each ton of a regulated pollutant emitted would be

charged the same fee.

3. Other fee alternatives.

a. Provide small businesses with reduced fees, defining a size of small business below which such reductions are appropriate.

b. Provide sources that qualify for general permits, if such permits are developed within the state's Title V program, with reduced fees.

c. Determine if any source sizes or types should not be assessed a fee, and if so, what source sizes or types should these be.

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

Statutory Authority: The authority for the adoption of the regulation is § 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Applicable federal requirements: The legal basis for the regulation is Title V, §§ 501-507 of the Federal Clean Air Act (42 USC 7401 et seq., 91 Stat 685). The regulatory basis for the regulation is 40 CFR Part 70.

The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Act. Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. In addition to requiring that states develop operating permit programs, Congress is also requiring that states develop permit fee programs to pay for the cost of the programs.

Section 502(b)(3) sets out the minimum elements that must be included in each permit fee program. The owner or operator of all sources subject to the requirement to obtain a permit must pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of Title V, including the costs of the small business technical assistance program. Section 502(b)(3)(A) specifies what is meant by reasonable costs, as follows:

1. Reviewing and acting upon any application for a permit.

2. Implementing and enforcing the terms and conditions of the permit, but not including any court costs or other costs associated with any enforcement action.

3. Emissions and ambient monitoring.

4. Preparing generally applicable regulations or guidance.

5. Modeling, analyses, and demonstrations.

6. Preparing inventories and tracking emissions.

Section 502(b)(3)(B) specifies the requirements for the total amount of fees to be collected by the state permitting authority, as follows:

1. The state must demonstrate that, except as otherwise provided, the program will collect in the aggregate from all sources subject to the program an amount not less than $25 per ton of each regulated pollutant, or such other amount as the EPA administrator may determine adequately reflects the reasonable costs of the permit program.

2. "Regulated pollutant" means (a) a volatile organic compound; (b) each pollutant regulated under Section 111 or 112 of the Act; and (c) each pollutant for which a national primary ambient air quality standard has been promulgated (except carbon monoxide).

3. In determining the amount to be collected, the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that pollutant.

4. The requirements of paragraph 1 above will not apply if the permitting authority can demonstrate that collecting an amount less than $25 per ton of each regulated pollutant will meet the requirements of 502(b)(3)(A).

5. The fee calculated under paragraph 1 above shall be increased (consistent with the need to cover the reasonable costs authorized by 502(b)(3)(A)) in each year beginning after the year of the enactment of the Act by the percentage, if any, by which Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989.

Section 502(b)(3)(C) specifies the requirements of a permit fee program if the EPA administrator finds that the fee provisions of a state program are inadequate or if the Title V operating permit program itself is inadequate and EPA has to administer the fee program itself.

Section 507(f) concerning fees and the Small Business Technical Assistance Program specifies that the state may reduce any fee required under Title V to take into account the financial resources of small business stationary sources.

Section 408(c)(4) of Title IV concerning sources of acid deposition states that Phase I affected units shall not be required to pay permit fees during the years 1995 through 1999.

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

Written comments may be submitted until the close of business on August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Department of Environmental Quality, P.O. Box, 10089, Richmond, VA 23240, telephone (804) 225-2722.

VA.R. Doc. No. C93-1782; Filed July 7, 1993, 9:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Appendix E – Public Participation Procedures).** The purpose of the proposed action is to amend the Public Participation Procedures (Appendix E), on a permanent basis, such that the procedures will comply with the 1993 amendments to the Administrative Process Act.

Public meeting: A public meeting will be held by the department in the Board Room, Department of Environmental Quality, Water Division Office Building, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, at 2 p.m. on September 9, 1993, to discuss the intended action. Unlike an informational proceeding (informal hearing), which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development. The meeting will be held jointly by all regulatory agencies within the Secretariat of Natural Resources.

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 facility should contact Doneva Dalton at the Office of Regulatory Services, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230, 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 August 23, 1993.

Use of collaborative approach: The department is soliciting comments on the advisability of forming an ad hoc advisory group, utilizing a standing advisory committee or consulting with groups or individuals registering interest in working with the department to assist in the drafting and formation of any proposal. The primary function of any group, committee or individuals that may be utilized is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

Informational proceeding and public hearing plans: After the proposal is published in the Virginia Register of Regulations, the department will hold at least one informational proceeding (informal hearing) to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice. The department does not intend to hold an evidential hearing (public hearing) on the proposal.

Need: The provisions of Appendix E (Public Participation Procedures) are in need of revision to conform to recent changes in the requirements of the Administrative Process Act and to replace recently adopted emergency procedures. These procedures detail how the State Air Pollution Control Board will solicit and use public input during the development and formation of regulations in the regulatory adoption process.

The Administrative Process Act (APA) establishes the requirements that state agencies and boards must follow in the adoption of regulations.

In 1993, the Virginia General Assembly passed several amendments to the APA which became effective on July 1, 1993. The Office of the Attorney General later determined that these amendments would require boards with regulations currently in the promulgation process to stop the process and begin anew under the new provisions if final adoption could not occur prior to July 1.

In addition, state boards must also adopt new public participation procedures prior to restarting the regulatory actions. In order to be able to continue to process regulatory actions in order to meet various federal and state statutory deadlines, the State Air Pollution Control Board adopted emergency regulations covering regulatory public participation which became effective on June 29, 1993. However, the emergency regulations only remain in effect for one year from the effective date shown above, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the APA.

Although all aspects of the APA do not affect the procedures, the APA imposes new requirements on agencies that directly affect public participation in the processing of regulations under the APA. For example, the APA requires the board to set out in their procedures any methods for the identification and notification of interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the APA mandates that the board include in their procedures a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Estimated impact: No financial impact on regulated entities or the public is expected from any proposed

amendments to the procedures since the procedures only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the procedures will comply with the amendments to the APA.

Alternatives: The alternatives are to either (i) amend the regulation to meet the needs identified above and comply with the new requirements of the APA or (ii) not amend the regulation and leave the provisions cited outdated and ineffective with regard to compliance with the APA.

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

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1308 of the Code of Virginia.

Written comments may be submitted until the close of business September 15, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

Contact: Robert A. Mann, Director of Program Development, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-5789.

VA.R. Doc. No. C93-1892; Filed July 21, 1993, 10:42 a.m.

Notice of Intended Regulatory Action

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

Public meeting: A public meeting will be held by the department in the Pohick Regional Library, 6450 Sydenstricker Road, Burke, Virginia, at 10:30 a.m. on August 25, 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.

Public hearing plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulations or 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 reach together in the presence of sunlight. When concentrations of ozone in the ambient air exceed EPA standard the area is considered to be out of compliance and is classified "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 the 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 highway construction and sewage treatment plant development. 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 infirm. There are significant health care costs associated with these adverse effects.

Northern Virginia has an ozone air pollution problem classified by the EPA as "serious." The problem is predominately from motor vehicle emissions. A vehicle emissions inspection and maintenance (I/M) program has been in place in Northern Virginia for 10 years to help reduce these emissions; however, substantially greater emission reductions are now required and a more effective I/M program must be implemented in the Northern Virginia area.

I/M programs provide a way to check whether the emission control system on a vehicle is working correctly. All new passenger cars and trucks sold in the United States today must meet stringent air pollution standards and those standards will become more stringent in model year 1994, but they can only retain this low-polluting profile if the emission controls and engine are functioning properly. I/M is designed to ensure that vehicles stay clean in actual use. Through periodic vehicle checks and required repair of vehicles that fail the test, I/M encourages proper vehicle maintenance and discourages tampering with emission control devices. This, in turn, can substantially reduce the amount of volatile organic

compounds, carbon monoxide, and nitrogen oxides emitted to the ambient air, thereby reducing the formation of ozone and lowering ozone concentrations.

Alternatives:

1. Draft new regulations which will provide for implementation of a motor vehicle emissions testing program that meets the provisions of the federal Clean Air Act and associated EPA regulations and policies.

2. Make alternative regulatory changes to those required by the Act. No alternatives have been promulgated by EPA as meeting the requirements of the Act. Adopting an unapprovable program will result in sanctions being imposed by EPA.

3. Take no action to amend the regulations and continue to operate the existing program in violation of the Act and risk sanctions by EPA.

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

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

Section 182(c)(3) of the federal Act requires "enhanced" I/M programs in all urbanized areas with 1980 populations of 200,000 or more (as defined by the Bureau of Census) that are classified as serious or above ozone nonattainment areas. In addition, the Act created ozone transport regions (OTR) and specifically established one such region in the Northeastern United States, covering Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area of the District of Columbia, which includes Northern Virginia. The Act requires an enhanced I/M program in any metropolitan statistical area (MSA) or portion of a MSA within the OTR with a 1990 population of 100,000 or more, regardless of its nonattainment status.

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

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

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

An enhanced I/M program must be implemented by January 1, 1995. Areas switching from a test-and-repair to a test-only network, which applies to the Northern Virginia area, may phase in the change between January 1995 and January 1996. The General Assembly of Virginia passed legislation providing for a biennial, test-only, enhanced emission inspection program which will become effective January 1, 1995. The program will apply to motor vehicles that have actual gross weights of 26,000 pounds or less. The new legislation also provides for regulations to address the protection of the following consumer interests in accordance with EPA requirements: (i) the number of inspection facilities and inspection lanes relative to population density; (ii) the proximity of inspection facilities to motor vehicle owners; (iii) the time spent waiting for inspections; and (iv) the days and hours of operation of inspection facilities.

Other key provisions of the legislation include:

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

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

Vehicle held for resale by dealers, up to five years old, may be issued a one-year registration without being required to have an I/M test, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's warranty at the time of resale; and

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

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

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

Written comments may be submitted until close of business on August 25, 1993, to Director of Program Development, Air Division, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

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

VA.R. Doc. No. C93-1785; Filed July 7, 1993, 9:35 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Air Pollution Control Board intends to consider promulgating regulations entitled: **VR 120-99-05. 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 One, State Capitol Building, Richmond, Virginia, at 2 p.m. on August 25, 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.

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 infirm.

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 delineate 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 [1]	30%	50%	70%
Heavy-Duty trucks above 8,500 GVW	50%	50%	50%

[1] EPA 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 August 25, 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.

VA.R. Doc. No. C93-1784; Filed July 7, 1993, 9:35 a.m.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider repealing regulations entitled: **VR 130-01-1. Public Participation Guidelines.** The purpose of the proposed action is to establish new public participation guidelines for the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects. The board does not plan to hold a public hearing in the promulgation of these regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1936; Filed July 9, 1993, 11:53 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider promulgating regulations entitled: **VR 130-01-1:1. Public Participation Guidelines.** The purpose of the proposed action is to establish public participation guidelines for the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects. The board does not plan to hold a public hearing in the promulgation of these regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1836; Filed July 9, 1993, 11:53 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to consider amending regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed action is to (i) amend the current licensure and registration requirements; (ii) promulgate new regulations governing the registration of professional limited liability companies and limited liability companies; and (iii) review current fee structure and other changes as needed. The agency plans to hold a public hearing on the proposed regulation.

Statutory Authority: § 54.1-404 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1706; Filed July 1, 1993, 11:57 a.m.

VIRGINIA BOARD FOR ASBESTOS LICENSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Board for Asbestos Licensing intends to consider repealing regulations entitled: **VR 190-05-01. Asbestos Licensing Regulations.** The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, training requirements, and other changes that are necessary to reflect 1993 General Assembly legislation. The agency does not intend to hold a public hearing on the repeal of this regulation.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R93-1707; Filed June 30, 1993, 2:46 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Board for Asbestos Licensing intends to consider promulgating regulations entitled: **VR 190-05-1:1. Asbestos Licensing Regulations.** The purpose of the proposed action is to review the entire regulation with special attention to sections pertaining to definitions, project designers, asbestos contractors, training requirements, and other changes that are necessary to reflect 1993 General Assembly legislation. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 36-99.7 and 54.1-501 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R93-1708; Filed June 30, 1993, 2:46 p.m.

AUCTIONEERS BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the Auctioneers Board intends to consider repealing regulations entitled: **VR 105-01-1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

VA.R. Doc. No. C93-1942; Filed July 24, 1993, 2:30 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auctioneers Board intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

VA.R. Doc. No. C93-1942; Filed July 24, 1993, 2:30 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auctioneers Board intends to consider repealing regulations entitled: **VR 150-01-2. Rules and Regulations of the Virginia Auctioneers Board** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its public participation guidelines. A public hearing will be held during the proposed comment period.

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

Written comments may be submitted until September 10, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

VA.R. Doc. No. C93-1921; Filed July 21, 1993, 11:56 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auctioneers Board intends to consider promulgating regulations entitled: **VR 150-01-2:1. Virginia Auctioneers Board Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its public participation guidelines. A public hearing will be held during the proposed comment period.

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

Written comments may be submitted until September 10, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

VA.R. Doc. No. C93-1921; Filed July 21, 1993, 11:56 a.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Audiology and Speech-Language Pathology intends to consider promulgating regulations entitled: **Public Participation Guidelines of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed action is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Audiology and Speech-Language Pathology. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

VA.R. Doc. No. C93-1825 Filed July 13, 1993, 9:33 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Audiology and Speech-Language Pathology intends to consider amending regulations entitled: **VR 155-01-2:1. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed action is to delete obsolete requirements, change the name of the board and profession to audiology and speech-language pathology, and to revise the definition of scopes of practice in adherence with 1992 legislation. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 54.1-2400 and 54.1-2602 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

VA.R. Doc. No. C93-1823 Filed July 13, 1993, 9:33 a.m.

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 repealing regulations entitled: **VR 170-01-00. Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 24, 1993.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

VA.R. Doc. No. C93-1991; Filed July 30, 1993, 11:53 a.m.

† 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 promulgating regulations entitled: **Board for Barbers Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 24, 1993.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

VA.R. Doc. No. C93-1990; Filed July 30, 1993, 11:53 a.m.

BOARD FOR BRANCH PILOTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider repealing regulations entitled: **VR 535-01-00. Public Participation Guidelines.** The purpose of the proposed action is to establish new public participation guidelines for the Board for Branch Pilots. The board does not plan to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-902 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1935; Filed July 9, 1993, 11:53 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider promulgating regulations entitled: **VR 535-01-00:1. Public Participation Guidelines for Board for Branch Pilots.** The purpose of the proposed action is to establish new public participation guidelines for the Board for Branch Pilots. The board does not plan to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-902 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1835; Filed July 9, 1993, 11:53 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Branch Pilots intends to consider amending regulations entitled: **VR 535-01-2. Branch Pilots Regulations.** The purpose of the proposed action is to (i) make changes to the requirements for licensure renewal; and (ii) promulgate changes for ARPA radar for licensed pilots. The agency plans to hold a public hearing on the proposed regulation.

Statutory Authority: § 54.1-902 of the Code of Virginia.

Written comments may be submitted until August 26, 1993.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

VA.R. Doc. No. C93-1705; Filed July 1, 1993, 11:58 a.m.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Notice of Intended Regulation Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Chesapeake Bay Local Assistance Board intends to consider amending regulations entitled: **VR 173-01-00:1. Public Participation Guidelines.** The purpose of the proposed action is to amend permanent Public Participation Guidelines (VR 173-01-00:1) so that the guidelines will comply with the 1993 amendments to the Administrative Process Act.

Basis and Statutory Authority: The basis for this regulation is § 10.1-2102 of the Code of Virginia which authorizes the board to adopt rules and procedures for the conduct of its business. In addition, § 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act (Act) and replace emergency guidelines which became effective June 30, 1993.

Substance and Purpose: The purpose of this proposed regulatory action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with the 1993 amendments to the Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the board include in its guidelines a general consultation with groups and individuals registering interest in working with the board.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the guidelines, since the guidelines only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act and provide greater opportunity for public involvement in information regarding the board's regulatory actions.

Alternatives: There is no alternative to taking regulatory action to amend the board's guidelines. The Act requires the board to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Mr. Scott Crafton at the address below and must be received by 4 p.m. on Wednesday, September 15, 1993.

In addition, the board's staff, with staffs of the other Natural Resource Agencies also amending their public participation guidelines, will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: Meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. Crafton at the address or telephone number listed below. Persons needing interpreter services for the deaf must notify Mr. Crafton no later than Monday, August 25, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations. This may also be a jointly held proceeding with one or more board members in attendance. If held independently, this informational proceeding will be convened by a member of the board. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Virginia

Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2102 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993.

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229.

VA.R. Doc. No. C93-1846; Filed July 19, 1993, 12:18 p.m.

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider repealing regulations entitled: **VR 175-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal the existing public participation guidelines so new guidelines can be promulgated. No public hearing on the proposed regulation is planned.

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

Written comments may be submitted until August 26, 1993, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Theater Row Bldg., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider promulgating regulations entitled: **VR 175-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to develop guidelines the council will use to obtain public input when developing regulations. This regulation will replace the emergency public participation guidelines approved by the council on June 22, 1993. No public hearing on the proposed regulation is planned.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until August 26, 1993, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 E. Broad St., Theater Row Bldg., Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Conservation and Recreation intends to consider amending regulations entitled: **VR 215-00-00. Regulatory Public Participation Procedures.** The purpose of the proposed action is to amend, on a permanent basis, the board's procedures to comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in its procedures any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the board include in its procedures a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Basis and Statutory Authority: The basis for this action is the Virginia Administrative Process Act, in particular § 9-6.14:7.1 of the Code of Virginia which requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Statutory authority for this specific action is found in § 10.1-107 of the Code of Virginia, which authorizes the Board of Conservation and Recreation (Board) to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

Need: This proposed regulatory action is necessary in order to establish procedures which comply with the 1993 amendments to the Administrative Process Act and replace emergency procedures which became effective on June 30, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the procedures since the procedures only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the procedures will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's procedures. The Act requires the board to adopt procedures and any procedures adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Wednesday, September 15, 1993.

In addition, the board's staff will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: Meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. App at the address below or telephone at (804) 786-4570 or TDD (804) 786-2121. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the procedures after the proposal is published in the Virginia Register of Regulations. This informational proceeding will be held in coordination with other regulatory authorities and agencies of the Secretariat of Natural Resources. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the procedures after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-107 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4579 or fax (804) 786-6141.

VA.R. Doc. No. C93-1866; Filed July 20, 1993, 2:23 p.m.

DEPARTMENT OF CONSERVATION AND RECREATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Conservation and Recreation intends to consider amending regulations entitled: **VR 217-00-00. Regulatory Public Participation Procedures.** The purpose of the proposed action is to amend, on a permanent basis, the board's procedures to comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the department to set out in its procedures any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the department intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the department include in its procedures a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the department.

Basis and Statutory Authority: The basis for this action is the Virginia Administrative Process Act, in particular § 9-6.14:7.1 of the Code of Virginia which requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Statutory authority for this specific action is found in § 10.1-104 of the Code of Virginia, which authorizes the Department of Conservation and Recreation (Department) to prescribe rules and regulations necessary and incidental to the performance of duties or execution of powers conferred by law, and to promulgate regulations pursuant to the Administrative Process Act to carry out the provisions of Subtitle I of Title 10.1 of the Code of Virginia.

Need: This proposed regulatory action is necessary in order to establish procedures which comply with the 1993 amendments to the Administrative Process Act and replace emergency procedures which became effective on June 30, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the procedures since the procedures only impose requirements on the department. Regulated entities and the public should benefit from the proposed amendments in that the procedures will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the department's procedures. The Act requires the department to adopt procedures and any procedures adopted must comply with the provisions of the Act.

Public Comments: The department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the department seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written

comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Wednesday, September 15, 1993.

In addition, the department's staff will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: Meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Mr. App at the address below or telephone at (804) 786-4570 or TDD (804) 786-2121. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The department intends to hold an informational proceeding (informal hearing) on the proposed amendments to the procedures after the proposal is published in the Virginia Register of Regulations. This informational proceeding will be held in coordination with other regulatory authorities and agencies of the Secretariat of Natural Resources. The department does not intend to hold a public hearing (evidential) on the proposed amendments to the procedures after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-104 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4579 or fax (804) 786-6141.

VA.R. Doc. No. C93-1867; Filed July 20, 1993, 2:23 p.m.

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 repealing regulations entitled: **VR 220-01-00. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing public participation guidelines. Public hearings will be held at several locations around the state during the public comment period on the proposed regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1102 of the Code of Virginia.

Written comments may be submitted until September 10, 1993.

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

VA.R. Doc. No. C93-1899; Filed July 21, 1993, 11:38 a.m.

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 promulgating regulations entitled: **VR 220-01-00:1. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines. Public hearings will be held at several locations around the state during the public comment period on the proposed regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1102 of the Code of Virginia.

Written comments may be submitted until September 10, 1993.

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

VA.R. Doc. No. C93-1898; Filed July 21, 1993, 11:38 a.m.

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. Regulations of the Board for Contractors.** 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. Public hearings will be held at several locations around the state during the public comment period on the proposed regulations.

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

Written comments may be submitted until September 10, 1993.

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

VA.R. Doc. No. C93-1870; Filed July 21, 1993, 11:38 a.m.

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations

entitled: **VR 230-01-001. Public Participation Guidelines.** The purpose of the proposed action is to replace the emergency amended regulations VR 230-01-001 which were effective July 1, 1993. The public participation guidelines will outline how the agency plans to ensure public participation in the formation and development of regulations as required in the Administrative Process Act. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

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

Written comments may be submitted until August 25, 1993.

Contact: Amy Miller, Agency Regulatory Coordinator, Planning and Engineering, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

VA.R. Doc. No. C93-1779; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-004. Regulations for Human Subject Research.** The purpose of the proposed action is to establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162 et seq. of the Code of Virginia. This notice replaces the original Notice of Intended Regulatory Action to promulgate these same regulations under the title "Research Regulations" in the February 8, 1993, Virginia Register. By reinitiating this action, the agency is allowing the required 30 days for written comment. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

Statutory Authority: § 53.1-5.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Dr. Larry Guenther, Agency Management Lead Analyst, Research and Evaluation Unit, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C93-1780; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider amending regulations entitled: **VR 230-20-001:1. Standards for State Correctional Facilities.** The purpose of the proposed action is to update the language and remove conflicting data contained in some of the standards. This notice replaces the Notice of Intended Regulatory Action to promulgate regulations under this same title in the February 8, 1993, Virginia Register. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

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

Written comments may be submitted until August 25, 1993.

Contact: Lou Ann White, Certification Supervisor, Planning and Engineering, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. C93-1778; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider promulgating regulations entitled: **VR 230-30-005:1. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed action is to promulgate regulations to replace the emergency amended regulations which were effective July 1, 1993. The regulations will establish minimum standards for the construction, equipment, administration and operation of local correctional facilities, along with regulations establishing criteria to assess need, establish priorities, and evaluate requests for reimbursement of construction costs to ensure fair and equitable distribution of state funds provided. A public hearing will be held on the proposed regulations after publication. The location, date and time of the public hearing will be published at a later date.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1781; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider repealing regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Design and Construction of Jail Facilities.** The purpose of the proposed action is to repeal regulations which are superseded by the emergency regulations, VR 230-30-005.2, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities, which were effective July 1, 1993. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1777; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the 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 regulations which are not included in VR 230-30-001, Minimum Standards for Jail and Lockups. By this action, the Board of Corrections withdraws the first Notice of Intended Regulatory Action to repeal VR 230-30-006, which was published in the June 14, 1993, Virginia Register. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

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

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1776; Filed July 7, 1993, 11:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Corrections intends to consider repealing regulations entitled: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Costs.** The purpose of the proposed action is to repeal regulations which are superseded by the emergency regulations, VR 230-30-005.2, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities, which were effective July 1, 1993. The Board of Corrections does not plan to hold a public hearing on the proposed repeal of the regulations.

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.1 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Mike Howerton, Chief of Operations, Division of Community Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3251.

VA.R. Doc. No. C93-1775; Filed July 7, 1993, 11:43 a.m.

BOARD FOR COSMETOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider repealing regulations entitled: **VR 235-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal public participation guidelines in accordance with the Administrative Process Act prior to the expiration of emergency public participation guidelines on June 22, 1994. The agency does not intend to hold a public hearing on the proposed repeal of the regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1202 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509.

VA.R. Doc. No. C93-2030; Filed August 4, 1993, 12:02 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider repealing regulations entitled: **VR 235-01-02. Board for Cosmetology Rules and Regulations.** The purpose of the proposed action is to undertake a review and seek public comments for the purpose of repealing regulations as necessary to regulate the practice of cosmetology. The agency will hold a public hearing on the proposed repeal of the regulations after publication. Date, time and location to be announced.

Statutory Authority: § 54.1-1202 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509.

VA.R. Doc. No. C93-2027; Filed August 4, 1993, 12:01 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in accordance with the Administrative Process Act prior to the expiration of emergency public participation guidelines on June 22, 1994. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1202 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509.

VA.R. Doc. No. C93-2031; Filed August 4, 1993, 12:02 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Cosmetology intends to consider promulgating regulations entitled: **Board for Cosmetology Rules and Regulations.** The purpose of the proposed action is to undertake a review and seek public comments for the purpose of promulgating regulations as necessary to regulate the practice of cosmetology. The agency will hold a public hearing on the proposed regulations after publication. Date, time and location to be announced.

Statutory Authority: § 54.1-1202 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509.

VA.R. Doc. No. C93-2029; Filed August 4, 1993, 12:02 p.m.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **Regulations Relating to Private Security Services.** The purpose of the proposed action is to promulgate regulations relating to private security services through the regular process of the Administrative Process Act and to revise and amend the existing emergency regulations. The board intends to conduct a public hearing in the spring of 1994 to hear and consider recommendations concerning the proposed regulations.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until August 25, 1993, to L. T. Eckenrode, Department of Criminal Justice Services, P.O. Box 10110, Richmond, Virginia 23240-9998.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

VA.R. Doc. No. C93-1795; Filed July 7, 1993, 10:19 a.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider amending regulations entitled: **VR 270-01-0006. Regulations Governing Pupil Transportation Including Minimum Standards for School Buses in Virginia.** The purpose of the proposed action is to amend these regulations to conform with changes to the Code of Virginia, federal mandates and national standards. All interested parties will be notified and the Department of Education will hold at least one public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-16 and 22.1-176 of the Code of Virginia.

Written comments may be submitted until September 30, 1993.

Contact: Barbara V. Goodman, Principal Specialist, PTS, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2037.

VA.R. Doc. No. C93-1992; Filed July 30, 1993, 4:46 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **School Breakfast Program Requirements.** The purpose of the proposed action is to fulfill the requirements of the Code of Virginia to promulgate regulations for the implementation of school breakfast programs in Virginia public schools. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 22.1-207.3 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Dr. Jane Logan, Principal Specialist, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 371-2339.

VA.R. Doc. No. C93-2015; Filed August 4, 1993, 10:11 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **VR 270-01-0042.1. Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed action is to establish new regulations to

govern the hiring procedures and contractual agreements.

The 1992 General Assembly required the Department of Education to study local school division hiring process and provide a report to the 1993 session. A team of professionals studied hiring procedures for teachers and professional personnel in conjunction with a Department of Education study on the Revision of Teacher Contracts. The result of the study was report entitled "Report on Contracts for Local School Personnel and Uniform Hiring Procedures for Teachers." The recommendations set forth in the report form the basis for the proposed regulations. All of the major professional organizations participated as full team members in the development of the recommendations. Representatives from the Virginia Education Association, the Virginia Association of School Superintendents, the Virginia School Board Association, and the Virginia Association of School Personnel Administrators were team members and their constituency groups provided input into the team process. In addition, representatives of rural, urban, and suburban school communities participated as full team members. The recommendations represent the result of a thorough and comprehensive study and the agreements made among the team members and other representatives indicated above. Considerable input was provided on the perspective of teachers through the representatives from the Virginia Education Association.

The Board of Education and the Department of Education will hold public hearings on the proposed regulations.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Written comments may be submitted until September 30, 1993.

Contact: Brenda F. Briggs or Charles W. Finley, Compliance, P.O. Box 2120, 101 N. 14th St., Richmond, VA 23216-2120, telephone (804) 225-2750 or (804) 225-2747.

VA.R. Doc. No. C93-1893; Filed July 21, 1993, 10:16 a.m.

STATE EDUCATION ASSISTANCE AUTHORITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Education Assistance Authority intends to consider amending regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs.** The purpose of the proposed action is to reflect recent changes in federal laws and regulations governing the student loan programs. The State Education Assistance Authority does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Written comments may be submitted until August 25, 1993, to Marvin Ragland, VSAA, 411 East Franklin Street, Richmond, Virginia 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000.

VA.R. Doc. No. C93-1698; Filed July 2, 1993, 3:02 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Environmental Quality intends to consider promulgating regulations entitled: **VR 304-01-01. Public Participation Guidelines.** The purpose of the proposed action is to adopt, on a permanent basis, the department's guidelines such that the guidelines will comply with 1993 amendments to the Administrative Process Act (Act). Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the department to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the department intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the department include in its guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the department.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective on June 29, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from the proposed adoption of the guidelines since the guidelines only impose requirements on the department. Regulated entities and the public should benefit from the proposed amendments in that the procedures will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the department's guidelines. The Act requires the department to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the department seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with

groups or individuals to assist in the drafting and formation of a proposal. In addition, the department's staff will participate in a joint public meeting to be held at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: Meetings will be held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. 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 Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The department intends to participate in a joint informational proceeding (informal hearing) on the proposed adoption to the guidelines after the proposal is published in the Virginia Register of Regulations. The department does not intend to hold a public hearing (evidential) on the proposed amendments to the procedures after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Cindy M. Berndt, Policy and Planning Supervisor, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

VA.R. Doc. No. C93-1909; Filed July 21, 1993, 11:11 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider promulgating regulations entitled: **Public Participation Guidelines of the Board of Funeral Directors and Embalmers.** The purpose of the proposed action is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Funeral Directors and Embalmers. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2803 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907.

VA.R. Doc. No. C93-1826; Filed July 13, 1993, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-04. Regulations of the Resident Trainee Program for Funeral Service.** The purpose of the proposed action is to amend level of supervision of a registrant who has completed the apprenticeship but is not yet licensed, establish requirements for final reporting, and revise requirements to place a maximum time limit that one can remain registered as a trainee. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 54.1-2400 and 54.1-2803 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907.

VA.R. Doc. No. C93-1822; Filed July 13, 1993, 9:33 a.m.

BOARD OF GAME AND INLAND FISHERIES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Game and Inland Fisheries intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the board include in its guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Need: This proposed regulatory action is necessary in

order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective on June 23, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from the proposed amendments of the guidelines since the guidelines only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's guidelines. The Act requires the board to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal.

The board's staff will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room of the Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public. This public meeting will be a joint meeting of all regulatory agencies within the Natural Resources Secretariat.

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230 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 Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations. This informational proceeding may be convened by a member of the board. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 29.1-102 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993, to Belle Harding, 4010 West Broad Street, P.O. Box 11104, Richmond, Virginia 23230.

Contact: Mark D. Monson, Chief, Administrative Services, 4010 West Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

VA.R. Doc. No. C93-1897; Filed July 21, 1993, 9:40 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Game and Inland Fisheries intends to consider promulgating regulations entitled: **325-02-17. Permits.** The purpose of the proposed action is to set in regulation the discretionary fees to be associated with the different permits that are issued by the department, in accordance with language contained in HB 1777 that gives the Board of Game and Inland Fisheries the authority to set fees for identified permits. A listing of the identified permits and their proposed associated fees follows. In addition to written comments, the board will hear public comments at a meeting to be scheduled in accordance with procedures required by the board's public participation guidelines.

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993, to Belle Harding, 4010 West Broad Street, P.O. Box 11104, Richmond, Virginia 23230.

Contact: Mark D. Monson, Chief, Administrative Services, 4010 West Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

VA.R. Doc. No. C93-1896; Filed July 21, 1993, 9:40 a.m.

MISCELLANEOUS PERMITS -- PROPOSED FEE STRUCTURE
(miscprmt.2 // 6-29-93)

Type of Permit	Current Fee	Authorized Maximum	Proposed Fee
Aquaculture	$12.50 [1]	$20.00	$20.00
Bait Sales	$0.00	$20.00	$20.00
Bird Banding (Validate Fed Permit)	$0.00	$20.00	$0.00
Boat Ramp Special Use			
Non-profit Public Use	$0.00	$50.00	$0.00
Private/Commercial Use	$0.00	$50.00	$50.00
Boat Regattas/Tournaments	$0.00	$50/DAY	$50/DAY
Captive Herpetological Breeders	$0.00	$20.00	$20.00
Captive-Bred Herp. Sales	$0.00	$20.00	$20.00
Commercial Collection of Wildlife	$0.00	$50.00	$45.00
DCAP	$0.00	$50.00	$5.00
DMAP	$0.00	$50.00	$5.00
Deer Farming	$12.50 [1]	$350.00	$350.00
Endangered Species	$0.00	$20.00	$20.00 [2]
Exhibitor	$12.50 [1]	$20.00	$20.00
Exotic Species Importation	$0.00	$50.00	$50.00
Field Trials	$0.00	$25.00	$25.00
Fish Stocking	$0.00	$50.00	$5.00
Grass Carp (Exotic Import)	$0.00	$50.00	$10.00
Nuisance Animals	$0.00	$50.00	$25.00
Scientific Collecting	$0.00	$20.00	$20.00 [2]
Special Education Importation for Dead & Preserved Exotics	$0.00	$50.00	$0.00
Special Hunting	$0.00	$20.00	$10.00
Striped Bass Tournament	$0.00	$0.00	$0.00

MISCELLANEOUS PERMITS -- PROPOSED FEE STRUCTURE
(miscprmt.2 // 6-29-93)

Type of Permit	Current Fee	Authorized Maximum	Proposed Fee
Trout Fishing Preserve	$0.00	$50.00	$50.00
Wildlife (Game) Holders	$12.50 [1]	$20.00	$20.00 [3]
Wolf Hybrid - Individual	$0.00	$20.00	
Non-Neutered			$20/animal
Neutered			$10/animal
Wolf Hybrid - Kennel	$0.00	$100.00	$100.00

[1] Existing permits issued under the broad definition of game holders permit
[2] Exemption to fee: Governmental Agencies, Colleges & Universities, DGIF Contractors
[3] Exemption to Permit: Veterinarians temporarily holding wildlife for medical treatment

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 355-01-100. Public Participation Guidelines.** The purpose of the proposed action is to amend the public participation guidelines to reflect 1993 amendments to the Administrative Process Act. Currently, emergency public participation guidelines are in place and effective July 1, 1993, through June 30, 1994. No public hearings are planned during the public comment period to commence with publication of the proposed revisions.

Statutory Authority: §§ 32.1-12 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: Susan R. Rowland, MPA, Director, Office of Public Affairs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-3564.

VA.R. Doc. No. C93-1798; Filed July 7, 1993, 11:07 a.m.

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 (General Revisions).** The purpose of the proposed action is to give notice in accordance with the new public participation guidelines that the Board of Health intends to make appropriate amendments to update portions of the regulations pertinent only to state requirements, not federal mandates. The agency intends to hold a public hearing on the proposed amendments after publication.

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

Written comments may be submitted until September 9, 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, 400 S. Main St., 2nd Floor, Culpeper, VA 22701, telephone (703) 829-7340.

VA.R. Doc. No. C93-1864; Filed July 20, 1993, 10:44 a.m.

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 (Lead and Copper).** The purpose of the proposed action is to give notice in accordance with the new public participation guidelines that the Board of Health intends to make state regulations as stringent as the federal lead and copper rule. The agency intends to hold a public hearing on the proposed amendments after publication.

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

Written comments may be submitted until September 9, 1993, to Allen R. Hammer, P.E., Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, Virginia 23218.

Contact: James Moore, III, P.E., District Engineer, Lexington Field Office, 129 S. Randolph St., Lexington, VA 24450, telephone (703) 463-7136.

VA.R. Doc. No. C93-1865; Filed July 20, 1993, 10:44 a.m.

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 (Phase II and V).** The purpose of the proposed action is to give notice in accordance with the new public participation guidelines that the Board of Health intends to make state regulations as stringent as the federal Phase II, Phase V and standardized monitoring rules. The agency intends to hold a public hearing on the proposed amendments after publication.

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

Written comments may be submitted until September 9, 1993, to Allen R. Hammer, P.E., Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, Virginia 23218.

Contact: Monte J. Waugh, Technical Services Assistant, Virginia Department of Health, Division of Water Supply Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-5566.

VA.R. Doc. No. C93-1863; Filed July 20, 1993, 10:44 a.m.

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. This notice is being

resubmitted to ensure promulgation under the new public participation guidelines. The department intends to hold a public hearing following publication of the proposed regulations.

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

Written comments may be submitted until September 8, 1993.

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

VA.R. Doc. No. C93-1821; Filed July 14, 1993, 10:12 a.m.

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 355-34-200. Sewage Handling and Disposal Regulations (previously VR 355-34-02).** The purpose of the proposed action is to implement recommendations of the Secretaries Task Force on Septic System Regulations, which include increased separation distances to water table and rock; reduced system installation depths, easier access for the use of new technologies and the establishment of mass drainfield requirements. The Board of Health intends to hold a series of public hearing across the Commonwealth of Virginia. Dates and locations for public hearings will be announced when the proposed regulations are published.

Statutory Authority: §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: Donald J. Alexander, Director, Division of Onsite Sewer and Water Services, P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

VA.R. Doc. No. R93-1797; Filed July 7, 1993, 11:08 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider promulgating regulations entitled: **VR 355-35-700. Swimming Pool Regulations Governing the Posting of Water.** The purpose of the proposed action is to ensure that all public swimming pools are maintained in a manner which does not adversely affect the public health, welfare and safety by specifying how daily water quality tests are to be posted as newly required by the Code of Virginia, effective July 1, 1990. A public hearing will be held during the public comment period after the proposed regulations are published. These regulations, previously initiated, have been withdrawn to assure promulgation under new public participation guidelines.

Statutory Authority: §§ 32.1-248 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, P.O. Box 2448, Suite 115, Richmond, VA 23218, telephone (804) 786-3559.

VA.R. Doc. No. R93-1796; Filed July 7, 1993, 11:08 a.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-000. Public Participation Guidelines in the Formation and Development of Regulations.** The purpose of the proposed action is to amend the public participation guidelines to reflect recent statutory changes. No public hearing is planned on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 9-164 2 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1703; Filed July 1, 1993, 3:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** The purpose of the proposed action is to amend its general rules and regulations so that they will be consistent with other regulations which establish the Virginia Health Services Cost Review Council's new methodology for the review and measurement of efficiency and productivity of health care institutions. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1700; Filed July 1, 1993, 3:12 p.m.

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 370-01-002. Methodology to Measure Efficiency and Productivity of Health Care Institutions.** The purpose of the proposed action is to adopt specific regulations to establish a new Virginia Health Services Cost Review Council methodology to measure efficiency and productivity of health care institutions. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-161.1 and 9-164 2 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1701; Filed July 1, 1993, 3:12 p.m.

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: **Regulations of the Virginia Health Services Cost Review Council Patient Level Data System.** The purpose of the proposed action is to adopt regulations to implement the Virginia Health Services Cost Review Council's responsibility for the establishment of a patient level database system in Virginia. A public hearing will be held at noon on December 21, 1993, at 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-164 2 and 9-166.5 of the Code of Virginia.

Written comments may be submitted until September 15, 1993, to John A. Rupp, Executive Director, 805 East Broad Street, 6th Floor, Richmond, Virginia 23219.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. C93-1702; Filed July 1, 1993, 3:12 p.m.

BOARD FOR HEARING AID SPECIALISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider repealing regulations entitled: **VR 375-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the repeal of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534

VA.R. Doc. No. C93-1943; Filed June 24, 1993, 2:27 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Hearing Aid Specialists intends to consider promulgating regulations entitled: **Board for Hearing Aid Specialists Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534

VA.R. Doc. No. C93-1943; Filed June 24, 1993, 2:27 p.m.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

public participation guidelines that the State Council of Higher Education for Virginia intends to consider amending regulations entitled: **VR 380-01-00. Guidelines for Public Participation in the Development and Promulgation of Regulations.** The purpose of the proposed action is to change some unclear language in the emergency and add language so they follow new APA guidelines. The emergency regulations are only effective for 12 months. These will replace the emergency regulations. The agency does not plan to hold a public hearing on the proposed regulations.

§§ 9-6.14:7.1 and 23-9.6:1 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Fran Bradford, Legislative and Public Relations Specialist, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2613.

VA.R. Doc. No. C93-1834; Filed July 9, 1993, 11:32 a.m.

BOARD OF HISTORIC RESOURCES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Historic Resources intends to consider amending regulations entitled: **VR 390-01-01. Public Participation Guidelines.** The purpose of the proposed action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in their guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the board include in its guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective on June 25, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from the proposed amendments of the guidelines since the guidelines only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's guidelines. The Act requires the board to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Margaret T. Peters at the Department of Historic Resources, and must be received by 4:30 p.m. on Wednesday, September 15, 1993.

In addition, the Department of Historic Resources will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m. on September 15, 1993.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

VA.R. Doc. No. C93-1887; Filed July 21, 1993, 8:39 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Historic Resources intends to consider promulgating regulations entitled: **VR 390-01-03.1. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.** The purpose of the proposed action is to set out those criteria to be used by the board in designating Virginia landmarks, to set out the requirements for public notice and public hearings prior to any designation, and to set out the procedures by which property owners may object to and prevent designation.

Estimated Impact: No financial impact on regulated

entities or the public is expected from this proposed regulation because the regulation imposes requirements only on the board and Department of Historic Resources. Regulated entities and the public will benefit by having the board's evaluation criteria and its procedures formally set out in the regulation.

Alternatives: There is no alternative to taking regulatory action to set out criteria and procedures for designations by the board. The regulation is specifically required by § 10.1-2205 of the Code of Virginia.

NOIRA public meeting and ad hoc advisory group: The subject of this Notice of Intended Regulatory Action (NOIRA) was the subject of a previous NOIRA published in November 1992. Pursuant to that previous NOIRA, a public meeting was held on December 16, 1992, in Richmond, and an ad hoc advisory group was formed to assist in drafting a proposed regulation. The advisory group completed its work and a draft proposed regulation was prepared. Because the present NOIRA is being published to meet new technical requirements of the Administrative Process Act which became effective on July 1, 1993, no additional public meeting will beheld during the comment period established by this NOIRA. No new ad hoc advisory committee will be formed.

Public Comments: The board requests comments on its intended regulatory action. Comments may be generic or they may assess the relative merits of specific alternatives. The board also seeks comments on the costs and benefits of its intended regulatory action or any alternatives. The draft proposed regulation previously prepared with the assistance of the ad hoc advisory group noted above is available to assist interested persons in preparing comments.

Intent to Hold an Informational Proceeding or Public Hearing: While there will not be a public meeting during this NOIRA comment period that ends on September 10, 1993, the board does intend to hold an informational proceeding (informal hearing) on the proposed regulation after the specific proposal is published in the Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: §§ 10.1-2205, 10.10-2206.1 and 10.1-2206.2 of the Code of Virginia.

Written comments may be submitted until September 10, 1993.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

VA.R. Doc. No. C93-1891; Filed July 21, 1993, 11:42 a.m.

DEPARTMENT OF HISTORIC RESOURCES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Historic Resources intends to consider amending regulations entitled: **VR 392-01-01. Public Participation Guidelines.** The purpose of the proposed action is to amend, on a permanent basis, the department's guidelines such that the guidelines will comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the department to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups that the department intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the department include in their guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the department.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective on June 25, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from the proposed amendments of the guidelines since the guidelines only impose requirements on the department. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the department's guidelines. The Act requires the department to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The department seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the department seeks comment on whether it should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Margaret T. Peters at the Department of Historic Resources, and must be received by 4:30 p.m. on Wednesday, September 15, 1993.

In addition, the Department of Historic Resources will hold a public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code of Virginia.

Written comments may be submitted until 4:30 p.m. on September 15, 1993.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

VA.R. Doc. No. C93-1886; Filed July 21, 1993, 8:39 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Historic Resources intends to consider promulgating regulations entitled: **VR 392-01-02.1. Evaluation Criteria and Procedures for Nomination of Property to the National Register or for Designation as a National Historic Landmark.** The purpose of the proposed action is to set out those criteria to be used by the director in nominating properties to the National Park Service for inclusion in the National Register of Historic Places, or for designation as a National Historic Landmark, and to set out the requirements for public notice and public hearings prior to any nomination.

Estimated Impact: No financial impact on regulated entities ,or the public is expected from this proposed regulation because the regulation imposes requirements only on the Department of Historic Resources. Regulated entities and the public will benefit by having the director's evaluation criteria and its procedures formally set out in the regulation.

Alternatives: While the Code of Virginia authorizes the director to promulgate regulations but does not explicitly require those regulations, the department finds that the 1992 General Assembly's intent in establishing that authorization was that evaluation criteria and procedures should be formally promulgated as regulations. The department consequently finds that no alternative to regulatory action is available.

NOIRA public meeting and ad hoc advisory group: The subject of this Notice of Intended Regulatory Action (NOIRA) was the subject of a previous NOIRA published in November 1992. Pursuant to that previous NOIRA, a public meeting was held on December 16, 1992, in Richmond, and an ad hoc advisory group was formed to assist in drafting a proposed regulation. The advisory group completed its work, and a draft proposed regulation was prepared. Because the present NOIRA is being published to meet new technical requirements of the Administrative Process Act which became effective on July 1, 1993, no additional public meeting will beheld during the comment period established by this NOIRA. No new ad hoc advisory committee will be formed.

Public Comments: The department requests comments on its intended regulatory action. Comments may be generic or they may assess the relative merits of specific alternatives. The department also seeks comments on the costs and benefits of its intended regulatory action or any alternatives. The draft proposed regulation previously prepared with the assistance of the ad hoc advisory group noted above is available to assist interested persons in preparing comments.

Intent to Hold an Informational Proceeding or Public Hearing: While there will not be a public meeting during this NOIRA comment period that ends on September 10, 1993, the department does intend to hold an informational proceeding (informal hearing) on the proposed regulation after the specific proposal is published in the Register of Regulations. The department does not intend to hold a public hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 10.1-2201 of the Code of Virginia.

Written comments may be submitted until September 10, 1993.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

VA.R. Doc. No. C93-1890; Filed July 21, 1993, 11:42 a.m.

DEPARTMENT OF LABOR AND INDUSTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider repealing regulations entitled: **VR 425-01-68. Public Participation Guidelines.** The purpose of the proposed action is to repeal this regulation which was replaced by emergency regulation effective June 30, 1993. The emergency regulation will expire on June 30, 1994. The department will promulgate new permanent regulations to replace this regulation. The agency will hold a public informational hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631.

VA.R. Doc. No. C93-1877; Filed July 20, 1993, 4:01 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider repealing regulations entitled: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.** The purpose of the proposed action is to repeal this regulation which was replaced by emergency regulation effective June 30, 1993. The emergency regulation will expire on June 30, 1994. Copies of the emergency regulation are available from the agency. The agency will hold a public informational hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 40.1-6(3), 40.1-100(A)(9) and 40.1-114 of the Code of Virginia.

Written comments may be submitted until September 8, 1993, to John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

Contact: Dennis Merrill, Labor Law Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3224.

VA.R. Doc. No. C93-1878; Filed July 20, 1993, 4:01 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider promulgating regulations entitled: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards.** The purpose of the proposed action is to promulgate a new permanent regulation governing the employment of minors on farms, in gardens and in orchards, to replace the emergency regulation (VR 425-01-81) which became effective June 30, 1993. The emergency regulation is effective for one year until June 30, 1994. The agency will hold a public informational hearing on the proposed regulation after it is published.

Statutory Authority: §§ 40.1-6(3), 40.1-100(A)(9) and 40.1-114 of the Code of Virginia.

Written comments may be submitted until September 8, 1993, to John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219.

Contact: Dennis Merrill, Labor Law Director, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631.

VA.R. Doc. No. C93-1871; Filed July 20, 1993, 4:00 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Labor and Industry intends to consider promulgating regulations entitled: **VR 425-01-100. Public Participation Guidelines.** The purpose of the proposed action is to promulgate new public participation guidelines for the agency to incorporate the new requirements of the Administrative Process Act, which were the result of legislation enacted by the 1993 General Assembly.

The current public participation guidelines were superseded by an emergency regulation (VR 425-01-68) effective June 30, 1993. This emergency regulation will expire on June 30, 1994. The current and the emergency public participation guidelines were adopted jointly by the Commissioner of Labor and Industry, the Virginia Safety and Health Codes Board, and the Virginia Apprenticeship Council, and govern the promulgation, amendment, and repeal of all regulations by the commissioner, board or council. New public participation guidelines for the agency will only cover regulatory action by the Commissioner of Labor and Industry. The agency will hold a public informational hearing on the proposed regulation after it is published.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2631.

VA.R. Doc. No. C93-1873; Filed July 20, 1993, 4:00 p.m.

Apprenticeship Council

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that Apprenticeship Council intends to consider promulgating regulations entitled: **VR 425-01-102. Public Participation Guidelines.** The purpose of the proposed action is to promulgate new public participation guidelines for the Virginia Apprenticeship Council to incorporate the new requirements of the Administrative Process Act which were the result of legislation enacted by the 1993 General Assembly.

The current public participation guidelines were superseded by an emergency regulation (VR 425-01-68)

effective June 30, 1993. This emergency regulation will expire on June 30, 1994. The current and the emergency public participation guidelines were adopted jointly by the Commissioner of Labor and Industry, the Virginia Safety and Health Codes Board, and the Virginia Apprenticeship Council, and govern the promulgation, amendment, and repeal of all regulations by the commissioner, board or council. New public participation guidelines for the agency will only cover regulatory action by the Apprenticeship Council. The agency will hold a public informational hearing on the proposed regulation after it is published.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-117 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Thomas E. Butler, Assistant Commissioner, Training and Public Services, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-2327.

VA.R. Doc. No. C93-1875; Filed July 20, 1993, 4:00 p.m.

Safety and Health Codes Board

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider repealing regulations entitled: **VR 425-02-11. VOSH Administrative Regulations Manual.** The purpose of the proposed action is to repeal this regulation which was replaced by emergency regulation effective June 30, 1993. The emergency regulation will expire on June 30, 1994. The department and board will promulgate a new permanent regulation to replace this regulation. The agency will hold a public informational hearing on the proposed repeal of the regulation after publication.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

VA.R. Doc. No. C93-1876; Filed July 20, 1993, 4:01 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider promulgating regulations entitled: **VR 425-02-95. VOSH Administrative Regulations Manual.** The purpose of the proposed action is to update the Virginia Occupational Safety and Health Administrative Regulations Manual to reflect legislative and administrative changes to the Virginia Occupational Safety and Health (VOSH) program, and as a result of regulatory review. The board will hold a public hearing on the proposed regulation after it is published.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2324.

VA.R. Doc. No. C93-1872; Filed July 20, 1993, 4:00 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Safety and Health Codes Board intends to consider promulgating regulations entitled: **VR 425-02-101. Public Participation Guidelines.** The purpose of the proposed action is to promulgate new public participation guidelines for the Virginia Safety and Health Codes Board to incorporate the new requirements of the Administrative Process Act, which were the result of legislation enacted by the 1993 General Assembly.

The current public participation guidelines were superseded by an emergency regulation (VR 425-01-68) effective June 30, 1993. This emergency regulation will expire on June 30, 1994. The current and the emergency public participation guidelines were adopted jointly by the Commissioner of Labor and Industry, the Virginia Safety and Health Codes Board, and the Virginia Apprenticeship Council and govern the promulgation, amendment, and repeal of all regulations by the commissioner, board or council. New public participation guidelines for the agency will only cover regulatory action by the Safety and Health Codes Board. The agency will hold a public informational hearing on the proposed regulation after it is published.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2384.

VA.R. Doc. No. C93-1874; Filed July 20, 1993, 4:00 p.m.

MARINE RESOURCES COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Marine Resources Commission intends to consider amending regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to amend, on a permanent basis, public participation guidelines so that the guidelines will comply with the 1993 amendments to the Administrative Process Act.

Basis and Statutory Authority: The basis for this regulation is § 28.2-103 of the Code of Virginia which authorizes the commission to promulgate regulations and guidelines necessary to carry out the provisions of Title 28.2. In addition, § 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective June 30, 1993.

Substance and Purpose: The purpose of this proposed regulatory action is to amend, on a permanent basis, the commission's guidelines such that the guidelines will comply with the 1993 amendments to the Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the commission to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the commission intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the commission include in its guidelines a general consultation with groups and individuals registering interest in working with the commission.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the guidelines since the guidelines only impose requirements on the commission. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the commission's guidelines. The Act requires the commission to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The commission seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the commission seeks comment on whether the agency should form an ad hoc advisory group, utilize the standing Habitat Management Advisory Committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Mr. R. W. Grabb at the address below and must be received by 4 p.m. on Wednesday, September 15, 1993.

In addition, the commission's staff will participate in a joint public meeting at 2 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to persons with disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton at the Department of Environmental Quality by telephoning (804) 527-5162 or TDD (804) 527)4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The commission intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations. The commission does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Virginia Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 28.2-103 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993.

Contact: Robert W. Grabb, Chief, Habitat Management Division, Virginia Marine Resources Commission, P.O. Box 756, 2600 Washington Avenue, Newport News, VA 23607-0756, telephone (804) 247-2250 or toll-free 1-800-541-4646.

VA.R. Doc. No. C93-1858; Filed July 20, 1993, 8:57 a.m.

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: **VR 460-02-2.600. Eligibility Conditions and Requirements – Guardianship Fees.** The purpose of the proposed action is to provide for the deduction of guardianship fees in post-eligibility treatment of income in determining a Medicaid eligible individual's personal needs

allowance in an institutional or home-and-community-based waiver service. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Ann Cook Eligibility and Regulatory Consultant, Division of Policy and Research, 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.

VA.R. Doc. No. C93-1830; Filed July 13, 1993, 4:22 p.m.

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 Services: Cost Report Filing and Final Settlement Filing Requirements.** The purpose of the proposed action is to promulgate regulations that require providers to submit additional financial, statistical, and structural information for the following purposes: a) for submission of a completed cost report; b) to enable DMAS to make the findings and assurances required by federal law. These regulations will also include a penalty for the failure to submit the cost report and required information in a timely manner. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Scott Crawford, 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.

VA.R. Doc. No. C93-1827; Filed July 13, 1993, 4:22 p.m.

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 460-03-3.1102. Case Management Services – Preauthorization of Case Management for the Elderly.** The purpose of the proposed action is to conform the reauthorization requirement for case management for the elderly with the deadlines for reassessment. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Ann Cook Eligibility and Regulatory Consultant, Division of Policy and Research, 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.

VA.R. Doc. No. C93-1829; Filed July 13, 1993, 4:22 p.m.

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 460-03-4.1940:1. Nursing Home Payment Systems – Balloon Loan Financing.** The purpose of the proposed action is to clarify the treatment and limitations of balloon loan financing and refinancing for nursing facilities. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Richard Weinstein, 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.

VA.R. Doc. No. C93-1837; Filed July 13, 1993, 4:22 p.m.

† 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 460-04-8.9. Public Participation Guidelines.** The purpose of the proposed action is to amend the agency's public participation guidelines to conform with changes to the Administrative Process Act. The agency does not intend to hold a public hearing for this regulatory change.

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

Written comments may be submitted until September 22, 1993, to Roberta Jonas, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

VA.R. Doc. No. C93-2026; Filed August 4, 1993, 11:54 a.m.

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 460-05-1000.0000. State/Local Hospitalization Program.** The purpose of the proposed action is to limit the allocation of remaining state funds consistent with these regulations and limit the use of funds allocated for one fiscal to that year. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 22, 1993, to Dave Austin, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

VA.R. Doc. No. C93-1860; Filed July 20, 1993, 11:18 a.m.

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 program. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Mary Chiles, Manager, Division of Quality Care Assurance, 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.

VA.R. Doc. No. C93-1828; Filed July 13, 1993, 4:22 p.m.

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: **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. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Scott Crawford, 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.

VA.R. Doc. No. C93-1838; Filed July 13, 1993, 4:22 p.m.

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: **MR Waiver Services.** The purpose of the proposed action is to remove certain impediments to the effective and efficient implementation of services to persons with mental retardation and mental illness. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 22, 1993, to Chris Pruett, 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.

VA.R. Doc. No. C93-1859; Filed July 20, 1993, 11:17 p.m.

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: **Organ Transplantation.** The purpose of the proposed action is to expand the Medicaid coverage of organ transplantation to provide for heart, liver and bone marrow transplants for Medicaid eligible children under the age of 21 years. DMAS does not intend to hold a public hearing on the proposed amendments.

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

Written comments may be submitted until September 8, 1993, to Ellen Zagorin, Analyst, Division of Policy and Research, 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.

VA.R. Doc. No. C93-1839; Filed July 13, 1993, 4:22 p.m.

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 promulgating regulations entitled: **VR 465-01-1. Public Participation Guidelines.** The purpose of the proposed regulation is to promulgate permanent regulations that will replace emergency regulations that became effective in June 1993. These regulations are promulgated in conjunction with the Legislative Committee to the Board of Medicine. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until August 27, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9908.

VA.R. Doc. No. C93-1717; Filed July 2, 1993, 4:20 p.m.

DEPARTMENT OF MOTOR VEHICLES

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider amending regulations entitled: **VR 485-10-9304 (formerly VR 485-10-9101). Public Participation Guidelines for Regulation Development and Promulgation.** The purpose of the proposed action is to revise the existing regulations in accordance with the legislative changes made to the Administrative Process Act in the 1993 General Assembly session. A public hearing on the proposed regulations will be held after the proposed regulations have been published.

Statutory Authority: §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

Written comments may be submitted until September 24, 1993.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, 2300 W. Broad St., Room 319, Richmond, VA 23220, telephone (804) 367-1875.

VA.R. Doc. No. C93-1996; Filed August 3, 1993, 2:41 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider repealing regulations entitled: **VR 485-50-7801. Virginia Driver Improvement Act Rules and Regulations.** The purpose of the proposed action is to revise and update the Driver Improvement Program regulations. A public hearing on the proposed regulations will be held after the proposed regulations have been published.

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

Written comments may be submitted until September 24, 1993.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, 2300 W. Broad St., Room 319, Richmond, VA 23220, telephone (804) 367-1875.

VA.R. Doc. No. C93-1997; Filed August 3, 1993, 2:41 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider promulgating regulations entitled: **VR 485-50-9301. Virginia Driver Improvement Program Rules and Regulations.** The purpose of the proposed action is to revise and update the Driver Improvement Program regulations. This notice supercedes the notice previously published on April 19, 1993. A public hearing on the proposed regulations will be held after the proposed regulations have been published.

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

Written comments may be submitted until September 24, 1993.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, 2300 W. Broad St., Room 319, Richmond, VA 23220, telephone (804) 367-1875.

VA.R. Doc. No. C93-1988; Filed August 3, 1993, 2:41 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of

Motor Vehicles intends to consider promulgating regulations entitled: **VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.** The purpose of the proposed action is to provide information on the process that will be used and the documentation that will be required for proof of residency in the Commonwealth of Virginia. The process and documentation requirements will be applicable to all persons applying for agency documents beginning July 1, 1994. The Department of Motor Vehicles will hold public hearings on the proposed regulations after they have been published.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Written comments may be submitted until August 31, 1993, to Robin Brannon, Department of Motor Vehicles, Room 319, P.O. Box 27412, Richmond, Virginia 23269-0001.

Contact: Clarence H. Bradbery, Policy Analyst, Department of Motor Vehicles, Room 314, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-0408.

VA.R. Doc. No. C93-1697; Filed July 2, 1993, 2:50 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Motor Vehicles intends to consider promulgating regulations entitled: **VR 485-50-9303. Insurance and Surety Company Reporting of Information to DMV.** The purpose of the proposed action is to define the process for insurance and surety companies doing business in Virginia to report and furnish motor vehicle liability information to Virginia DMV. The Department of Motor Vehicles will hold public hearings on the proposed regulations after they have been published.

Statutory Authority: § 46.2-706.1 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: Jerome L. Stein, DMV Division Manager, Department of Motor Vehicles, Room 315, P.O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-6728.

VA.R. Doc. No. C93-1699; Filed July 2, 1993, 4:31 p.m.

BOARD OF NURSING HOME ADMINISTRATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing Home Administrators intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Nursing Home Administrators. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-3100 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9111.

VA.R. Doc. No. C93-1824; Filed July 13, 1993, 9:33 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing Home Administrators intends to consider amending regulations entitled: **VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed action is to revise continuing education requirements of the board, to establish as permanent fee increases in emergency regulations, and to delete the public participation guidelines. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: § 54.1-3100 of the Code of Virginia.

Written comments may be submitted until September 22, 1993.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9907.

VA.R. Doc. No. C93-1994; Filed July 21, 1993, 4:37 p.m.

BOARD FOR OPTICIANS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Opticians intends to consider repealing regulations entitled: **VR 505-01-0. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed action.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1940; Filed June 29, 1993, 11:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Opticians intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace the emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed action.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1941; Filed June 29, 1993, 11:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Opticians intends to consider amending regulations entitled: **VR 505-01-1:1. Board for Opticians Regulations.** The purpose of the proposed action is to solicit public comment on all existing regulations as to the effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its public participation guidelines. A public hearing will be held during the proposed comment period.

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

Written comments may be submitted until September 10, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1922; Filed July 21, 1993, 11:56 a.m.

DEPARTMENT OF PERSONNEL AND TRAINING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Personnel and Training intends to consider promulgating regulations entitled: **VR 525-01-1. Public Participation Guidelines.** The purpose of the proposed action is to establish guidelines for public participation in regulation development and promulgation. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Gina Irby, Legislative Liaison, Department of Personnel and Training, James Monroe Bldg., 13th Floor, Richmond, VA 23219, telephone (804) 371-6212.

VA.R. Doc. No. C93-1993; Filed August 2, 1993, 11:09 a.m.

DEPARTMENT OF STATE POLICE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider amending regulations entitled: **VR 545-00-01. Regulations Relating to Public Participation Policy.** The purpose of the proposed action is to revise this agency's guidelines for public participation consistent with the recent changes to the Administrative Process Act. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1, 18.2-295, 18.2-308.2:2, 46.2-1165, 52-8.4, 52-25.1, and 54.1-4009 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1709; Filed July 2, 1993, 11:14 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals.** The purpose of the proposed action is to establish specifications which define standards and identification for back-up audible alarm signals required on garbage and refuse collection and disposal vehicles, and certain vehicles used primarily for highway repair and maintenance. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1712; Filed July 2, 1993, 11:15 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications of the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** The purpose of the proposed action is to establish specifications for lights used on farm tractors in excess of 108 inches in width as required by § 46.2-1102 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1715; Filed July 2, 1993, 11:14 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** The purpose of the proposed action is to establish specifications which define standards and identification for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway hauling permit issued pursuant to § 46.2-1139 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1713; Filed July 2, 1993, 11:15 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Relating to Standards and Specifications for Regrooved or Recut Tires.** The purpose of the proposed action is to establish specifications which define standards for regroovable and regrooved tires and identification of regroovable tires. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1710; Filed July 2, 1993, 11:14 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** The purpose of the proposed action is to establish specifications which define standards for stickers or decals required to be placed on all-terrain vehicles sold by retailers within the Commonwealth. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1714; Filed July 2, 1993, 11:15 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider amending regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** The purpose of the proposed action is to revise the Motor Vehicle Safety Inspection Rules and Regulations to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 46.2-909, 46.2-1002, 46.2-1011, 46.2-1018, 46.2-1022, 46.2-1023, 46.2-1024, 46.2-1025, 46.2-1052, 46.2-1053, 46.2-1056, 46.2-1058, 46.2-1063, 46.2-1065, 46.2-1070, 46.2-1090.1, 46.2-1093, 46.2-1163, 46.2-1164, 46.2-1165 and 46.2-1171 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

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

VA.R. Doc. No. C93-1711; Filed July 2, 1993, 11:16 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Governing the Creation of a Criminal Firearms Clearinghouse.** The purpose of the proposed action is to establish permanency of the regulations currently in place as emergency regulations. A public hearing will be held on the proposed regulations after publication.

Statutory Authority: § 52-25.1 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Lieutenant R. Lewis Vass, State Police Lieutenant, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

VA.R. Doc. No. C93-1861; Filed July 20, 1993, 11:14 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of State Police intends to consider promulgating regulations entitled: **Regulations Governing Purchases of Handguns in Excess of One Within a 30-Day Period.** The purpose of the proposed action is to adopt permanent regulations to carry out the provisions of Chapter 486 of the 1993 Acts of Assembly, which amended § 18.2-308.2:2 of the Code of Virginia. A public hearing will be held on the proposed regulation after publication.

Statutory Authority: § 18.2-302.2:2 of the Code of Virginia.

Written comments may be submitted until September 9, 1993.

Contact: Lieutenant R. Lewis Vass, State Police Lieutenant, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

VA.R. Doc. No. C93-1862; Filed July 20, 1993, 11:14 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Professional and Occupational Regulation intends to consider promulgating regulations entitled: **Employment Agencies Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1302 of the Code of Virginia.

Written comments may be submitted until September 24, 1993.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

VA.R. Doc. No. C93-1988; Filed August 3, 1993, 11:52 a.m.

REAL ESTATE APPRAISER BOARD

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Appraiser Board intends to consider repealing regulations entitled: **VR 583-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal public participation guidelines in accordance with the Administrative Process Act prior to the expiration of the emergency public participation guidelines on June 30, 1994. The agency does not intend to hold a public hearing on the proposed repeal of the regulations after publication.

Statutory Authority: §§ 9-6.4:7.1 and 54.1-2013 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

VA.R. Doc. No. C93-2036; Filed August 4, 1993, 12:01 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Appraiser Board intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines in accordance with the Administrative Process Act prior to the expiration of the emergency public participation guidelines on June 30, 1994. The agency does not intend to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2013 of the Code

of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

VA.R. Doc. No. C93-2032; Filed August 4, 1993, 12 noon

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Real Estate Appraiser Board intends to consider amending regulations entitled: **VR 583-01-03. Real Estate Appraiser Board Rules and Regulations.** The purpose of the proposed action is to undertake a review and seek public comment for the purpose of amending regulations as necessary to regulate the practice of real estate appraisal. The agency will hold a public hearing on the proposed regulations after publication. Date, time and location to be announced.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Written comments may be submitted until September 23, 1993.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

VA.R. Doc. No. C93-2034; Filed August 4, 1993, 12:01 p.m.

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 promulgating regulations entitled: **Real Estate Board Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until September 1, 1993.

Contact: Joan White, Assistant Director, Department of Occupational and Professional Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

VA.R. Doc. No. C93-1799; Filed July 7, 1993, 11:34 a.m.

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 repealing regulations entitled: **VR 585-01-0. Public Participation Guidelines.** The purpose of the proposed action is to promulgate regulations to replace emergency regulations. The agency does not intend to hold a public hearing on the proposed regulation.

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

Written comments may be submitted until September 1, 1993.

Contact: Joan White, Assistant Director, Department of Occupational and Professional Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

VA.R. Doc. No. C93-1807; Filed July 7, 1993, 11:34 a.m.

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 promulgating regulations entitled: **Common Interest Association Annual Report Regulations.** The purpose of the proposed action is to promulgate regulations which establish the filing fee and time of filing for community association annual reports. The agency does not intend to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 55-79.93:1, 55-504.1 and 55-516.1 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: Emily O. Wingfield, Property Registration Administrator, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8510.

VA.R. Doc. No. C93-1704; Filed July 1, 1993, 12:25 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-27-02. Minimum Standards for Licensed Private Child Placing Agencies.** The purpose of the proposed regulation is to develop standards governing home studies of intended parents and surrogate and her husband as required by § 20-160 of the Code of Virginia, (Children of Assisted Conception Act). The Minimum Standards for Licensed Private Child Placing Agencies are the standards private agencies must meet to obtain a license to place children in foster or adoptive homes. No public hearing is planned on the proposed regulation.

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

Written comments may be submitted until August 30, 1993, to Doris Jenkins, Division of Licensing Programs, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret J. Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider promulgating regulations entitled: **VR 615-43-4.1. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** The purpose of the proposed action is to implement the changes in § 63.1-236 of the Code of Virginia, effective July 1, 1992, which allow adults adopted in Virginia to apply to the Commissioner of Social Services for identifying information on their birth families. Emergency regulations were published in The Virginia Register of Regulations on August 24, 1992, and a Notice of Intended Regulatory Action was published on November 16, 1992. A second Notice of Intended Regulatory Action is being published for the purpose of informing the public that there is no plan to hold a public hearing.

Statutory Authority: §§ 63.1-25, 63.1-223, 63.1-226, 63.1-228, 63.1-229, 63.1-236 and 63.1-236.1 of the Code of Virginia.

Written comments may be submitted until September 10, 1993, to Sandra A. Sanroma, Foster Care and Adoptions Unit, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Governmental Affairs, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1821.

VA.R. Doc. No. C93-1833; Filed July 19, 1993, 10:19 a.m.

STATE BOARD OF SOCIAL SERVICES AND CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with these agencies' public participation guidelines that the State Board of Social Services and Child Day-Care Council intend to consider amending regulations entitled: **VR 615-30-01 and 175-03-01. General Procedures and Information for Licensure.** The purpose of the proposed action is to amend regulations to include sanctions for child welfare agencies, and to include procedures for issuance of multi-year licenses. The board and council will consider public comments on the subject of the proposed regulation at their regularly scheduled meetings.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until September 9, 1993, to Kathryn Thomas, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret J. Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

VA.R. Doc. No. C93-1831; Filed July 19, 1993, 10:19 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with these agencies' public participation guidelines that the State Board of Social Services and the Child Day-Care Council intend to consider amending regulations entitled: **VR 615-38-01 and 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.** The purpose of the proposed action is to develop regulations for licensed child day center systems – a new program resulting from passage of Senate Bill 777 and House Bill 2380 (1993 General Assembly Session). The board and council will consider public comments on the subject of the proposed regulation at their regularly scheduled meetings.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code o Virginia.

Written comments may be submitted until September 9, 1993, to Kathryn Thomas, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Margaret J. Friedenberg, Policy Analyst, Bureau of Governmental Affairs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

VA.R. Doc. No. C93-1832; Filed July 19, 1993, 10:19 a.m.

SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Soil and Water Conservation Board intends to consider amending regulations entitled: **VR 625-00-00:1. Regulatory Public Participation Procedures.** The purpose of the proposed action is to amend, on a permanent basis, the board's procedures to comply with the 1993 amendments to the Administrative Process Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemaking under the Act. For example, the Act requires the board to set out in its procedures any methods for the identification and notification of interested persons, and any specific means of seeking input fro interested persons or groups which the board intends t

use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that board include in its procedures a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Basis and Statutory Authority: The basis for this action is the Virginia Administrative Process Act, in particular § 9-6.14:7.1 of the Code of Virginia which requires each agency to develop, adopt and utilize public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Statutory authority for this specific action is found in the Code of Virginia at various references. Section 10.1-502 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board (Board) to promulgate regulations necessary for the execution of Chapter 5 of Title 10.1 of the Code of Virginia (§ 10.1-500 et seq.). This authorization covers the Erosion and Sediment Control Law and its attendant regulations. Section 10.1-603.18 of the Code of Virginia authorizes the board to promulgate regulations for the proper administration of the Flood Prevention and Protection Assistance Fund which is to include but not limited to the establishment of amounts, interest rates, repayment terms, consideration of the financial stability of the particular local public body applying Flood Prevention and Protection Assistance Fund Act (§ 10.1-603.16 et seq.). The Dam Safety Act under § 10.1-605 of the Code of Virginia requires the board to promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated (§ 10.1-604 et seq.). The Conservation, Small Watersheds Flood Control and Area Development Fund Act (§ 10.1-636 et seq.) authorizes the board to establish guidelines for the proper administration of the fund and the provisions of the article (Article 4).

Need: This proposed regulatory action is necessary in order to establish procedures which comply with the 1993 amendments to the Administrative Process Act (Act) and replace emergency procedures which became effective on June 30, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the procedures since the procedures only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the procedures will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's procedures. The Act requires the board to adopt procedures and any procedures adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4:00 p.m. on Wednesday, September 15, 1993.

In addition, the Board's staff will hold a public meeting at 2:00 p.m. on Thursday, September 9. 1993, in the Board Room, of the Department of Environmental Quality, Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, 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 Mr. App at the address below or by telephone at (804) 786-4570 or TDD (804) 786-2121. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

Intent to Hold and Informational Proceeding or Public Hearings: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the procedures after the proposal is published in the Register of Regulations. This informational proceeding will be held in coordination with other regulatory authorities and agencies of the Secretariat of Natural Resources. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the procedures after the proposal is published in the Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-561, 10.1-603.18, 10.1-605 and 10.1-636 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-4570, fax (804) 786-6141.

VA.R. Doc. No. C93-1868; Filed July 20, 1993, 2:22 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Soil and Water Conservation Board intends to consider amending regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations.** The purpose of the proposed action is to amend the existing erosion and sediment control regulations for compliance with the changes to the Erosion and Sediment Control Law made by Chapter 925 of the 1993 Virginia Acts of Assembly which became effective on July 1, 1993.

Basis and Statutory Authority: The basis for this action is Article 4 (§ 10.1-560 et seq.) Chapter 5 of Title 10.1 of the Code of Virginia which establishes the authority for these regulations. Applicable laws and regulations include the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia; VR 625-02-00. Erosion and Sediment Control Regulations; all other Acts of Assembly and the Code of Virginia references conferring powers, duties, and responsibilities on the board.

Need: This proposed regulatory action is necessary to form the basis for the administration, implementation, and enforcement of the Virginia Erosion and Sediment Control Law (Act) for compliance with the changes to the Act enacted by the 1993 General Assembly.

Substance: The intent of these regulations is to provide a framework for compliance with the Act while at the same time providing flexibility for innovative solutions to erosion and sediment control practices. These regulations set forth minimum standards for the effective control of soil erosion, sediment deposition and nonagricultural runoff that are required to be met in erosion and sediment control programs adopted by districts and localities under the Act.

Estimated Impact: There are anticipated impacts on regulated entities and the public since the proposed amendments impose new requirements. Regulated entities and the public should benefit from the proposed amendments in that the regulations will comply with amendments to the Act.

Alternatives: There is no alternative to taking action to amend the erosion and sediment control regulations. Chapter 925 amendments to the Erosion and Sediment Control Law require the board to amend the regulations and adopt procedures which comply with the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended action to include recommendations on the regulations and costs and benefits of any alternatives. To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Friday, October 1, 1993.

The director has decided to form an ad-hoc advisory committee to assist the department in the development of amendments to the regulations. In addition the department's staff will hold a public meeting at 7 p.m. on Tuesday, September 28, 1993, in the General Assembly Building, House Room D, (1st floor) Capitol Square, Richmond, Virginia 23219 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 Mr. Leon E. App at the address below or telephone at (804) 786-4570 or TDD (804) 786-2121. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, September 13, 1993.

Intent To Hold an Informational Proceeding or Public Hearings: The board intends to hold informational proceedings (informal hearings) on the proposed amendments to the regulations after the amended regulation is published in the Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the regulations after the amended regulation is published in the Register of Regulations.

Statutory Authority: Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 1, 1993.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

VA.R. Doc. No. C93-1986; Filed August 3, 1993, 10:50 a.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Soil and Water Conservation Board intends to consider promulgating regulations entitled: **VR 625-02-01. Erosion and Sediment Control Certification Regulations.** The purpose of the proposed action is to adopt certification regulations for the board for compliance with the changes to the Erosion and Sediment Control Law made by Chapter 925 of the 1993 Virginia Acts of Assembly which became effective on July 1, 1993.

Basis and Statutory Authority: The basis for this action is Article 4 (§ 10.1-560 et seq.) Chapter 5 of Title 10.1 of the Code of Virginia which establishes the authority for these regulations. Applicable laws and regulations include the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia; VR 625-02-00, Erosion and Sediment Control Regulations; all other Acts of Assembly and the Code of Virginia references conferring powers, duties, and responsibilities on the board.

Need: This proposed regulatory action is necessary to form the basis for the administration, implementation, and enforcement of the issuance of certificates of competence for the compliance with the Virginia Erosion and Sediment Control Law (Act) changes enacted by the 1993 General Assembly.

Substance: These regulations are applicable to every program authority that administers an erosion and sediment control program under the Virginia Erosion an

Sediment Control Law and Regulations. The proposed regulations establish the general requirements and minimum standards for certificates of competence issued by the board for the following classifications: program administrator, plan reviewer, and project inspector. The Department of Conservation and Recreation (Department) in administering education and training programs for specified subject areas of the Act is authorized under § 10.1-561 E to charge reasonable fees to persons attending such programs to cover the costs of administering the programs.

Estimated Impact: There are anticipated impacts on regulated entities and the public since the proposed amendments impose new requirements. Regulated entities and the public should benefit from the proposed amendments in that the regulations will comply with amendments to the Act.

Alternatives: There is no alternative to taking action to amend the erosion and sediment control regulations. Chapter 925 amendments to the Act require the board to promulgate the certification regulations which comply with the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended action to include recommendations on the regulations and costs and benefits of any alternatives. To be considered, written comments should be directed to Mr. Leon E. App at the address below and must be received by 4 p.m. on Friday, October 1, 1993.

The director has decided to form an ad-hoc advisory committee to assist the department in the development of amendments to the regulations. In addition the department's staff will hold a public meeting at 7 p.m. on Tuesday, September 28, 1993, in the General Assembly Building, House Room D, (1st floor) Capitol Square, Richmond, Virginia 23219 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 Mr. Leon E. App at the address below or telephone at (804) 786-4570 or TDD (804) 786-2121. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, September 13, 1993.

Intent To Hold an Informational Proceeding or Public Hearings: The board intends to hold informational proceedings (informal hearings) on the proposed amendments to the regulations after the amended regulation is published in the Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the regulations after the amended regulation is published in the Register of Regulations.

Statutory Authority: Article 4 (§ 10.1-560 et seq.) Chapter 5 of Title 10.1 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 1, 1993.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

VA.R. Doc. No. C93-1987; Filed August 3, 1993, 10:50 a.m.

DEPARTMENT OF TAXATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-0-1. Guidelines for Public Participation in Regulation Development and Promulgation.** The purpose of the proposed action is to update the regulation for guidelines for public participation in regulation development and promulgation in accordance with Chapter 898 of the 1993 Acts of the General Assembly. This action will replace emergency regulation 630-0-1, which was effective as of June 30, 1993. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: David M. Vistica, Tax Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167.

VA.R. Doc. No. C93-1793; Filed July 7, 1993, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider promulgating, amending and repealing regulations entitled: **VR 630-10-1 through VR 630-10-113. Virginia Retail Sales and Use Tax Regulations.** The purpose of the proposed action is to update all of the retail sales and use tax regulations by amending or repealing existing regulations and adding new regulations in order to clarify current departmental policy. This notice is being republished to ensure compliance with the changes to the Administrative Process Act pursuant to HB 1652 (Chapter 898) of 1993. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0010.

VA.R. Doc. No. C93-1790; Filed July 7, 1993, 10:48 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Taxation intends to consider amending regulations entitled: **VR 630-18-796.11:1 through VR 630-18-796.11:9. Virginia Egg Excise Tax.** The purpose of the proposed action is to amend the existing regulations in order to incorporate the law change in HB 2113 (Chapter 809) of 1993, which expands egg tax coverage. The agency intends to hold a public hearing on the proposed regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Written comments may be submitted until August 25, 1993.

Contact: Cecilia H. Glembocki, Virginia Egg Board, 911 Saddleback Court, McLean, VA 22102, telephone (703) 790-1984.

VA.R. Doc. No. C93-1792; Filed July 7, 1993, 10:48 a.m.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-5. Hazardous Materials Transportation Rules and Regulations at Bridge-Tunnel Facilities.** The purpose of the proposed action is to revise the format of the manual to bring it into conformity with federal regulations concerning hazardous materials transportation. The department will hold a public hearing on the proposed amendments after publication.

Statutory Authority: §§ 33.1-12 and 33.1-49 of the Code of Virginia.

Written comments may be submitted until September 22, 1993.

Contact: Ken Harris, Emergency Operations Manager, Maintenance Division, Emergency Operations Center, Old Highway Bldg., 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-2848.

VA.R. Doc. No. C93-2016; Filed August 4, 1993, 10:36 a.m.

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of the Treasury and the Treasury Board intend to consider amending regulations entitled: **VR 640-01-1. Public Participation Guidelines for the Department of the Treasury and Treasury Board (formerly VR 640-01).** The purpose of the proposed action is to solicit and promote the participation of all interested parties in the development, formulation and adoption of such regulations as the department and Treasury Board may promulgate under the authority established by state law. Interested parties should contact the department in writing of their desire to take part in the development of these guidelines. The agency does not intend to hold a public hearing on the amendment of the regulations after publication.

Statutory Authority: §§ 9-6.14:7.1, 2.1-177 and 2.1-179(9) of the Code of Virginia.

Written comments may be submitted until September 24, 1993.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P.O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-3131.

VA.R. Doc. No. C93-2017; Filed August 4, 1993, 11:22 a.m.

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider amending regulations entitled: **VR 662-01-01. Public Participation Guidelines for Adoption or Amendment of Regulations.** The purpose of the proposed action is to bring the Virginia Racing Commission's public participation guidelines into conformance with the recent changes to the Administrative Process Act. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

Statutory Authority: §§ 9-6.14:7.1 and 59.1-369 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1787; Filed July 6, 1993, 2:03 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Medication.** The purpose of the proposed action is to establish procedures for post-race testing in racehorses utilized in pari-mutuel wagering and establish guidelines

for the use of medication if any medication is permitted by the commission. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1788; Filed July 6, 1993, 2:03 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Racing Commission intends to consider promulgating regulations entitled: **Satellite Facilities.** The purpose of the proposed action is to establish the conditions under which satellite facilities shall be permitted to conduct pari-mutuel wagering on horse races. The commission will hold a public hearing on the proposed regulation after it is published in The Virginia Register.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until August 27, 1993.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. C93-1789; Filed July 6, 1993, 2:03 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-01-1:1. Public Participation Guidelines** The purpose of the proposed action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with the 1993 amendments to the Administrative Process Act.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Administrative Process Act and replace emergency guidelines which became effective on June 30, 1993.

Substance and Purpose: The purpose of this proposed regulatory action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with the 1993 amendments to the Act. Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in its guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that board include in its guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the board.

Estimated impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the guidelines since the guidelines only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's guidelines. The Act requires the board to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the cost and benefits of any alternatives. If you would like to be considered as an interested person, please advise Mr. Gilley. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. To be considered, written comments should be directed to Mr. William F. Gilley at the address below and must be received by 4:00 p.m. on Wednesday, September 15, 1993.

In addition, the board's staff will hold a public meeting at 2:00 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality Water Division, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, 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 Mr. Gilley at the address below or by telephone at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is published in the Register of Regulations. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the guidelines after the proposal is published in the Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 in the Code of Virginia.

Written comments may be submitted until 5 p.m. on September 15, 1993.

Contact: William F. Gilley, Regulatory Services Manager, Department of Environmental Quality, 11th Floor, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 229-2966.

VA.R. Doc. No. C93-1880; Filed July 20, 1993, 3:06 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-20-1. 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. Comments are invited on whether the agency should establish an ad hoc advisory committee, utilize a standing advisory committee, or consult with groups registering interest in working with the agency to assist in the drafting and formation of the proposed regulation.

There will be a public meeting to solicit comments on the intended regulatory action on August 17, 1993, at 10 a.m. in the Main Floor Conference Room C at the Monroe Building, 101 North 14th Street, Richmond, Virginia. The department will hold at least one informational proceeding on the proposed regulation after it is published.

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

Written comments may be submitted until August 31, 1993, to W. Gulevich, Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219.

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

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider promulgating regulations entitled: **Waste Tire End User Partial Reimbursement Regulation.** The purpose of the proposed action is to fulfill the directive set forth in § 10.1-1422 of the Code of Virginia by establishing a regulation for procedures and guidelines for the partial reimbursement to the end users of waste tires.

The Code of Virginia in § 10.1-1422 requires the Waste Management Board to promulgate regulations establishing a regulation for procedures and guidelines for the partial reimbursement to the end users of waste tires. There are no appropriate alternatives to the adoption of regulations to assure effectiveness and equity in accomplishing the requirement for partial reimbursement.

The purpose is to the means by which reimbursements may be made. The regulations proposed would establish the eligible end uses for reimbursement; the process for verification and tracking of tires; a reimbursement application and process; and methods and amounts of partial reimbursement including levels of reimbursement depending on end uses.

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

Comments are invited on whether the agency should establish an ad hoc advisory committee, utilize a standing advisory committee, or consult with groups registering interest in working with the agency to assist in the drafting and formation of the proposed regulation. The intent is to use the Institute for Environmental Negotiation at the University of Virginia as facilitator and convener. Anyone desiring to participate should contact Mr. Lassiter.

There will be a public meeting to solicit comments on the intended regulatory action on August 18, 1993, at 10 a.m. in the Department of Environmental Quality, SWCB Board

Room, located in the Innsbrook Offices at 4900 Cox Road, Glen Allen, Virginia. The department will hold at least one informational proceeding on the proposed regulation after it is published.

Statutory Authority: § 10.1-1422 of the Code of Virginia.

Written comments may be submitted until August 31, 1993.

Contact: Allan Lassiter, Director, Waste Tire Program, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2945.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Waste Management Board intends to consider amending regulations entitled: **VR 672-40-01. Regulated Medical Waste Management Regulations.** The purpose is to restart the adoption of amendment of VR 672-40-01, Virginia Regulated Medical Waste Management Regulations as a permanent regulation to amend VR 672-40-01, Virginia Infectious Waste Management Regulations, effective May 2, 1990, and replace the emergency regulation adopted by the Waste Management Board on June 25, 1993. The purpose is to amend those regulations that establish standards and procedures pertaining to 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 and statutory authority: The basis for this regulation is 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. Specifically, § 10.1-1402 authorizes the board to promulgate regulations for the supervision and control of waste management activities.

Need: This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly and to comply with the requirements of the board to amend existing regulations.

Substance and purpose: The purpose is to amend those regulations that establish standards and procedures pertaining to 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. The Virginia Waste Management Board adopted rules and regulations, titled "Infectious Waste Management Regulations," on November 2, 1989. The proposed amendments to the regulation will reflect improved and simpler practices providing 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.

Estimated impact: There are several thousand facilities or individuals in the Commonwealth who manage, treat, transport or dispose of regulated medical waste including facilities with permits or permits by rule. Adoption of the proposed amendment will provide more flexibility in waste management options.

Alternatives: The General Assembly required the amendment of the regulated medical waste regulations. Therefore, there is no alternative to the proposed amendment. Leaving the regulation unamended would prevent the implementation of improved management practices.

Public comments: The Department of Environmental Quality will hold a public meeting to consider public comment on the proposed regulatory action. The department requests that the public submit comments, at the meeting or by letter, on the correctness of the regulatory action, any ideas or advice the agency should consider in formation and drafting of the proposed regulations, and the costs and benefits of the proposed regulations amendment. The department intends to use its original ad hoc advisory committee to assist in revising the proposed regulations. Persons interested in being on the interested persons mailing list should provide name, address and specific areas of interest.

The department intends to hold at least one informational proceeding after the proposed regulations are published. On August 25, 1993, at 10 a.m., the department will hold joint public meetings with the Waste Division and Air Division to discuss proposed amendments and to hear public comment on the proposed amendment, VR 672-40-01, Virginia Regulated Medical Waste Management Regulations and proposed Air Pollution Control Board regulations. The meeting will be held in the Main Board Room, at the department's Innsbrook office, 4900 Cox Road, Glen Allen, Virginia.

Accessibility to persons with disabilities: The meetings are being held at a public facility believed to be accessible to persons with disabilities. Any person with question on the accessibility to the facility should contact Mr. William F. Gilley at (804) 225-2966 or TDD (804) 371-8737. Persons needing interpreter services for the deaf must notify Mr. Gilley no later than August 1, 1993.

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

Written comments may be submitted until 5 p.m. on September 6, 1993, to Robert G. Wickline, 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) 229-2966.

VA.R. Doc. C93-1794, Filed July 7, 1993, 10:57 a.m.

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 amending regulations entitled: **VR 680-13-03. Petroleum Underground Storage Tank Financial Responsibility Requirements.** The purpose of the proposed action is to (i) incorporate amendments enacted by the 1992 and 1993 General Assembly to establish revised financial responsibility compliance dates for owners and operators of underground storage tanks and petroleum storage tank vendors, and delete requirements for the Virginia Underground Petroleum Storage Tank Fund, which are to be established concurrently with this proposed regulatory action in a new regulation.

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act, which were enacted during the 1993 General Assembly.

The General Assembly's establishment of a sliding scale for financial responsibility (effective December 22, 1989) will reduce the amount of financial responsibility required of many owners and operators of underground storage tanks and petroleum storage tank vendors. Therefore, there would be no negative financial impact imposed on the regulated community. Extension of compliance dates will benefit the regulated community by providing owners and operators and vendors with more time in which to comply with financial responsibility requirements.

Section 62.1-44.34:11 A 2 a and b requires a reimbursement from the fund at the new reduced sliding scale for financial responsibility. The regulation must be amended to conform with state law.

Alternatives: Section 62.1-44.34:11 a 2 a and b requires reimbursement from the fund at the new reduced sliding scale for financial responsibility. The regulation must be amended to conform with state law.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. To be considered, comments should be directed to Doneva Dalton, Hearings Reporter, at the address below, and should be received by 4 p.m. on Wednesday, September 8, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on this proposed regulation after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential on this proposed regulation after the proposal is published in the Register of Regulations.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, the Petroleum Storage Tank Financial Responsibility Requirements (VR 680-13-03), and Chapters 456 and 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.34:9(8) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Mary-Ellen Kendall, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5195.

VA.R. Doc. No. C93-1900; Filed July 21, 1993, 11:14 a.m.

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 680-13-06. Virginia Petroleum Storage Tank Fund Requirements.** The purpose of the proposed action is to adopt a regulation describing the requirements for the Virginia Petroleum Storage Tank Fund.

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act, which were enacted during the 1993 General Assembly.

The amendments to the State Water Control Law enacted by the 1992 and 1993 sessions of the General Assembly (effective July 1, 1992, and July 1, 1993) increased the number of persons who have access to the fund and reduced the amount of financial responsibility required for certain categories of regulated owners and operators. Therefore, there would be no negative financial impact imposed on the regulated community and a substantial benefit may be conferred upon certain persons who are not part of the regulated community.

Alternatives: The current fund regulation is included as part of § 21 of VR 680-13-03, the Underground Storage Tank Financial Responsibility Requirements. The new regulation will provide additional guidelines on administration of the fund and will establish requirements for operators of exempt underground storage tanks and operators of facilities who are not regulated under VR 680-13-03.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. To be considered, comments should be directed to Doneva Dalton, Hearings Reporter, at the address below and should be received by 4 p.m. on Wednesday, September 8

1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on this proposed regulation after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential on this proposed regulation after the proposal is published in the Register of Regulations.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, the Petroleum Storage Tank Financial Responsibility Requirements (VR 680-13-03), the Underground Storage Tanks; Technical Standards and Corrective Requirements (VR 680-13-02), and Chapter 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.34:9(8) and 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Mary-Ellen Kendall, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5195.

VA.R. Doc. No. C93-1902; Filed July 21, 1993, 11:15 a.m.

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 repealing regulations entitled: **VR 680-14-01. Permit Regulation.** The purpose of the proposed regulatory action is to consider repealing the Permit Regulation. The adoption of a new VPDES Permit Regulation will make the VPDES program conform in style and content to the federal program regulations. The VPA Permit Regulation will be separated from the VPDES permitting program in order to recognize the distinction between this wholly state run VPA program and the federal/state NPDES/VPDES permit program.

The board is reissuing this notice to restart the repeal process because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program.

Need: The repeal of this regulation is being considered in order to eliminate any confusion and duplication of regulations which may result from the concurrent incorporation of the intent and purpose of the Permit Regulation into a Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (VR 680-14-01:1) and a Virginia Pollution Abatement (VPA) Permit Regulation (VR 680-14-21).

Estimated Impact: The repeal of VR 680-14-01 would have no impact on the regulated community nor the environment as the purpose and scope of the regulation are being transferred into the VPDES Permit Regulation and the VPA Permit Regulation.

Alternatives: One alternative to the proposed repeal is to continue to administer the VPDES and VPA permit programs under the current regulation (VR 680-14-01).

Public Comments: The board seeks written comments from interested persons on the proposed regulatory action and on the costs and benefits of the stated alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulatory action after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after it is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings 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.

VA.R. Doc. No. C93-1911; Filed July 21, 1993, 11:11 a.m.

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 680-14-01:1. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.** The purpose of the proposed action is to consider adoption of a new regulation. This regulation will govern point source discharges of pollutants to surface waters within the boundaries of the Commonwealth of Virginia. These discharges are currently regulated under the VPDES permit program and the Permit Regulation (VR 680-14-01). The adoption of the proposed regulation will replace the VPDES portion of the existing Permit Regulation and it will make the VPDES program conform to the federal NPDES regulation. This action is being done concurrently

with the repeal of VR 680-14-01. This reissuance of this notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Basis and Statutory Authority: The basis for this regulation 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes and §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the board to regulate discharges of sewage, industrial wastes and other wastes.

Section 402 of the Clean Water Act (33 USC 1251 et seq) authorizes states to administer the National Pollutant Discharge Elimination System permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. VR 680-14-01:1 will be the specific regulation governing this authorization.

Need: Any point source discharge of pollutants to surface waters is subject to regulation under a Virginia Pollutant Discharge Elimination System (VPDES) permit. The VPDES regulation will delineate the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law. In order to retain the authority to administer the VPDES permit program, the board must adopt regulations which are consistent with the federal program regulations. The current Permit Regulation (VR 680-14-01) does not reflect the latest revisions to the federal regulations and must be replaced.

Estimated Impact: This regulation will impact all of the approximately 2,800 Virginia Pollutant Discharge Elimination System permittees in that the governing regulation will be replaced with an updated version. There will be no added costs to the permittees beyond those required under the existing state and federal regulations.

Alternatives: One alternative to the proposed regulation is to modify the existing Permit Regulation, rather than adopting a separate regulation for VPDES permits. Another alternative is to take no action and to continue to administer the VPDES permit program under the current regulation which is not up to date with changes in the federal regulations.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings 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.

VA.R. Doc. No. C93-1910; Filed July 21, 1993, 11:11 a.m.

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 repealing regulations entitled: **VR 680-14-03. Toxics Management Regulations.** The purpose of the proposed regulatory action is to consider repealing the Toxics Management Regulation. This action is being proposed in order to eliminate any confusion and duplication of regulations which may result from the concurrent adoption of a VPDES Permit Regulation (VR 680-14-01:1).

The board is reissuing this notice to restart the regulatory process because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Basis and Statutory Authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(10) authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Need: Repeal of the Toxics Management Regulation is necessary since the board intends to consider adoption of a VPDES Permit Regulation which will include language on the evaluation of effluent toxicity and the mechanisms for control of toxicity through chemical specific and whole effluent toxicity limitations.

Estimated Impact: The repeal of this regulation would have no impact on the regulated community nor the environment as the intent and purpose of the regulatio

will be included in the new VPDES Permit Regulation VR 680-14-01:1. There should be no additional economic impact as a result of this action.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the repeal of the regulations after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the repeal of the regulations after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings 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.

VA.R. Doc. No. C93-1912; Filed July 21, 1993, 11:11 a.m.

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 680-14-10. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Seafood Processing Establishments.** The purpose of the proposed regulatory action is to adopt a general permit to cover the category of discharges which are generated by seafood packaging houses.

Basis and Statutory Authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General Permit Program.

Need: This proposal is necessary in order to streamline the VPDES permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the dischargers in these categories. It will reduce the time currently required to obtain coverage under the VPDES permitting system. The seafood processors must have a valid permit from the Water Control Board prior to receiving Certificates of Inspection from the State Health Department. Delays in issuance of a permit from the board may have serious economic impacts on this industrial category. Adoption of the proposed regulation would reduce the manpower needed by the Water Control Board for permitting these discharges. This would allow the agency to devote more resources to permitting other sources with greater potential for adverse water quality impacts.

The reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The proposed regulatory action is to adopt general permits for one or more categories of discharges. General permits may be issued for categories of dischargers that: involve the same or similar types of operations; discharge the same or similar types of wastes; require the same effluent limitations or operating conditions; and require the same or similar monitoring. As with an individual permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. Also, no discharge would be covered by the general permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Under this proposal the category, or series of categories, of discharges to be covered by proposed general permit regulations is the category of discharges which are generated by seafood packing houses. The facilities covered by this general permit may produce a variety of final products; however, their wastes are similar in nature and can be covered by the same general permit. The covered facilities would be those processors of various seafoods which produce minimal volumes of wastewaters and whose wastes are not considered to be significant

threats to water quality. Seafood processing discharges which are believed to impact water quality would be required to obtain individual VPDES permits, rather than be covered by this general permit. This permit would only cover industrial wastes associated with the operation of such facilities. Discharges of sanitary wastes would not be authorized by this permit.

Estimated Impact: Adoption of these regulations will affect approximately 300 seafood processing establishments. Coverage under the general permit would ensure a more timely and economical response to permit applications by reducing paper work and manpower for each permit in these categories. This would allow the agency to devote more resources to permitting other sources with greater potential for adverse water quality impacts.

Alternatives: Individual permits can continue to be issued to these facilities as staff time allows. This will require the applicant to pay a permit fee in excess of $2,000 instead of the $200 for general permit coverage. The cost of completing the application form for an individual permit is higher than for a general permit, and the time to obtain coverage under an individual permit is significantly longer than for a general permit. More agency resources are required to process an application for an individual permit than for coverage under a general permit.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings 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.

VA.R. Doc. No. C93-1913; Filed July 21, 1993, 11:12 a.m.

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 680-14-14. Facility Financial Responsibility Requirements.** The purpose of the proposed regulatory action is to adopt new regulations setting the amount of financial responsibility operators of facilities with aboveground storage tanks must demonstrate.

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act, which were enacted during the 1993 General Assembly.

The amendments to the State Water Control Law enacted by the General Assembly will require operators of facilities containing oil to demonstrate financial responsibility based on the aggregate capacity of all facilities operated in Virginia. This may require operators to self-insure or obtain additional pollution insurance, a letter of credit, a surety bond, or guarantee to meet the amount required by regulation. No governmental agency is required to comply with these regulations.

Alternatives: Section 62.1-44:34.16(1) requires the board to receive, review and approve financial responsibility documentation from facility operators. This regulation establishes the level of financial responsibility and the types of mechanisms operators may use to demonstrate that they are financially responsible for the cost of cleanup of a petroleum discharge from a facility. Section 62.1-44.34:21 of the Code of Virginia authorizes the board to collect administrative fees for acceptance of evidence of financial responsibility from any operator seeking acceptance of evidence of financial responsibility. The fees must be sufficient to meet, but not exceed, the cost of the board related to implementation of § 62.1-44.34:16 as to an operator seeking acceptance of evidence of financial responsibility. The board seeks comments on the appropriateness of the fee schedule for acceptance of evidence of financial responsibility.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. To be considered, comments should be directed to Doneva Dalton, Hearings Reporter, at the address below and should be received by 4 p.m. on Wednesday, September 8, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after the proposal is published in the Register of Regulations.

Applicable laws and regulations include the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia), the State Water Control Law, and Chapters 456 and 819 of the 1992 Acts of Assembly.

Statutory Authority: §§ 62.1-44.34:16 and 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Mary-Ellen Kendall, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5195.

VA.R. Doc. No. C93-1901; Filed July 21, 1993, 11:15 a.m.

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 680-14-16. General Permit Regulation for Storm Water Discharges Heavy Manufacturing.** The purpose of the proposed regulatory action is to adopt a general permit for storm water discharges from heavy manufacturing facilities. Heavy manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget SIC Manual, 1987).

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including heavy manufacturing facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application. The board is reissuing the notice to restart the adoption process due to changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 1250 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits.

Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from heavy manufacturing facilities. One is to issue an individual VPDES permit to each of the estimated 1250 heavy manufacturing facilities. The other is to adopt a general VPDES permit to cover this category of discharger.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The Board does not intend to hold a hearing (evidential) on the proposal after it is published in the Register of Regulations.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Doneva Dalton, Hearings 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.

VA.R. Doc. No. C93-1914; Filed July 21, 1993; 11:12 a.m.

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 680-14-17. General Permit Regulation for Storm Water Discharges from Light Manufacturing.** The purpose of the proposed regulatory action is to adopt a general permit for storm water discharges from light manufacturing facilities. Light manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25 (Office of Management and Budget SIC Manual, 1987).

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 (et seq.) of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc. which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including light manufacturing facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

The board is reissuing this notice to restart the adoption process due to changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water

discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 3650 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from light manufacturing facilities. One is to issue an individual VPDES permit to each of the estimated 3650 light manufacturing facilities. The other is to adopt a general VPDES permit to cover this category of discharger.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after it is published in the Register of Regulations.

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

Written comments may be submitted until 4 p.m., Wednesday, September 8, 1993 to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1915; Filed July 21, 1993, 11:12 a.m.

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 680-14-18. General Permit Regulation 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 action is to adopt a general permit for storm water discharges from the facilities defined as follows: (1) Transportation facilities classified as Standard Industrial Classification (SIC) 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations (Office of Management and Budget SIC Manual, 1987); (2) Landfills, land application sites, and open dumps that receive or have received any industrial wastes including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.); (3) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093; and (4) Steam electric power generating facilities, including coal handling sites.

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a

General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

The board is reissuing the notice to restart the adoption process due to changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each individual facility covered by this general permit. Facilities will be required to implement the provisions of the plan as a condition of the permit. The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the industrial activity at the facility, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the industrial activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are approximately 1500 facilities in this category of discharger that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit storm water discharges from the facilities in this category. One is to issue an individual VPDES permit to each of the estimated 1500 facilities in this category. The other is to adopt a general VPDES permit to cover this category of discharger.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after it is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1916; Filed July 21, 1993, 11:12 a.m.

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 680-14-19. General Permit Regulations for Storm Water Discharges from Construction Sites.** The purpose of this proposed action is to adopt a general permit for storm water discharges from construction sites that are defined as follows: construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale.

Basis and statutory authority: The basis for thes

regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: Most storm water runoff is discharged through conveyances, such as separate storm sewers, ditches, channels, pipes, etc., which are considered point sources under the Clean Water Act, and subject to regulation through the NPDES permit program. On November 16, 1990, EPA published the final NPDES Permit Application Regulations for Storm Water Discharges (55 FR 47990). This federal regulation established permit application requirements for certain municipal and industrial storm water discharges. Eleven categories of industrial activity were defined in the federal regulation including construction sites. Any facility covered by the federal regulation that discharges storm water through a point source to surface waters is required to file a storm water permit application.

The board is reissuing the notice to restart the adoption process due to changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The intent of this general permit regulation is to establish standard language for control of storm water discharges through the development of Storm Water Pollution Prevention Plans and to set minimum monitoring and reporting requirements. A site-specific Storm Water Pollution Prevention Plan will be required to be developed by the permittee for each construction site covered by this general permit. Owners/operators will be required to implement the provisions of the plan as a condition of the permit.

The Storm Water Pollution Prevention Plan will identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction activity at the site, and shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the construction activity.

Monitoring and reporting requirements will be established based upon the pollution potential of the storm water discharges from the construction activity. Monitoring reports will assist in evaluating the effectiveness of pollution prevention measures and provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of these regulations will allow for the streamlining of the permit process as it relates to construction activity permits. Coverage under the general permit would reduce the paper work required to obtain a permit for the owners/operators at construction sites. It will also reduce the time currently required to obtain coverage under the VPDES permitting system. The staff estimates that there are between 5,000 to 10,000 construction sites that may be required to apply for storm water permits. The board believes it would be impossible at this time to develop and issue individual permits in a timely manner to all applicants.

The board recognizes the need for storm water general permits to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the federal requirements to permit construction site storm water discharges. One is to issue an individual VPDES permit to each of the estimated 5,000 to 10,000 construction sites. The other is to adopt a general VPDES permit to cover this category of discharger.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after it is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m., on September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1917; Filed July 21, 1993, 11:12 a.m.

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 promulgate regulations entitled: **VR 680-14-20. General Virginia Pollution Discharge Elimination System Permit Regulation for Nonmetallic Mineral Mining.** The purpose of the proposed action is to adopt a general permit for the category of industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. General permits may be issued for categories of dischargers that involve the same or similar types of operations, discharge the same or similar types of wastes, require the same effluent limitations or operating conditions, and require the same or similar monitoring. The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. No discharge would be covered by the general permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Basis and statutory authority: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Need: This proposed regulatory action is needed in order to establish appropriate and necessary permitting of industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. The board is reissuing this notice in order to restart the adoption process due to changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Intent: The intent of this proposed general permit regulation is to establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. As with an individual VPDES permit, the effluent limits in the general permit will be set to protect the quality of the waters receiving the discharge. No discharge would be covered by the general permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Estimated Impact: There are approximately 9 establishments currently permitted under the individual VPDES permit program which may qualify for this proposed general permit. Adoption of this regulation will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulations would also reduce the manpower needed by the board for permitting these discharges.

Alternatives: There are two alternatives for compliance with federal and state requirements to permit industrial waste discharges associated with establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. One is the issuance of an individual VPDES permit to each establishment. The other is to adopt and issue a general VPDES permit to cover this category of discharger.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposal after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposal after it is published in the

Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

Contact: Richard Ayers, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

VA.R. Doc. No. C93-1918; Filed July 21, 1993, 11:13 a.m.

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 promulgate regulations entitled: **VR 680-14-21. Virginia Pollution Abatement Permit Regulation.** The purpose of the proposed action is to consider adoption of a new regulation. This regulation will govern sources of pollutants within the boundaries of the Commonwealth of Virginia that are not point source discharges to surface waters. These types of pollutant management activities are currently regulated under the VPA permit program and the Permit Regulation (VR 680-14-01). The VPA permit program is being separated from the Permit Regulation in order to recognize the distinction between this wholly state run permit program and the federal/state NPDES/VPDES permit program. This action is being done concurrently with the repeal of VR 680-14-01.

The board is reissuing this notice to restart the adoption process because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

Basis and Statutory Authority: The basis for this regulation 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes, §§ 62.1-44.16, 62.1-44.17, 62.1-44.18 and 62.1-44.19 authorize the board to regulate discharges of sewage, industrial wastes and other wastes.

Need: Any pollutant management activity which does not result in a point source discharge to surface waters may be required to obtain a VPA permit in order to ensure that the activity does not alter the physical, chemical or biological properties of state waters. VPA permits may be utilized to authorize the land application of sewage, sludge or industrial waste or the complete reuse and recycle of wastewater. The VPA regulation will delineate the procedures and requirements to be followed in connection with VPA permits issued by the board pursuant to the State Water Control Law.

Estimated Impact: This regulation will impact all of the approximately 1,500 holders of Virginia Pollution Abatement permits. However, there should not be a significant difference in the regulation of these permits or the costs incurred by permittees under the new regulation compared to the previous Permit Regulation (VR 680-14-01).

Alternatives: One alternative to the proposed regulation is to modify the existing Permit Regulation, rather than adopting a separate regulation for VPA permits. Another alternative is to take no action and to continue to administer the VPA permit program under the current regulation.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

Contact: Richard Ayers, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

VA.R. Doc. No. C93-1919; Filed July 21, 1993, 11:13 a.m.

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 Operation.** The purpose of the proposed action is to restart the process for adoption of regulations for 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.

Basis and Statutory Authority: The basis for this regulation 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, § 62.1-44.15(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. The reissuance of the Notice of Intended Regulatory Action to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly and to comply with the board's Public Participation Guidelines.

Substance and Purpose: General permits may be issued for categories of dischargers that involve the same or similar types of operations, manage the same or similar types of wastes, require the same effluent limitations or operating conditions, and require the same or similar monitoring. The purpose of this proposed regulatory action is to adopt a general permit for animal feeding operations which 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 it relates to the covered categories of activities. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. 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 Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulations after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, V 23230.

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

VA.R. Doc. No. C93-1920; Filed July 21, 1993, 11:13 a.m.

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 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.

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

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 fo consideration of surface water management areas. T board has received petitions from the Clarke and Warre

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 area. The staff estimates 15 surface water withdrawers in the proposed area will be required to obtain Surface Water Withdrawal Permits or Certificates from the State Water Control Board. There may be more agricultural irrigators who are not currently reporting their use.

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

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 for permits and $2,000 for certificates, 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 has been 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.

Alternatives: Alternatives 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, minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on this proposed regulation after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on this proposed regulation after the proposal is published in the Register of Regulations.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives and other alternatives.

Statutory Authority: § 62-1-246 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1906; Filed July 21, 1993, 11:16 a.m.

Notice of Intended Regulatory Action

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

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

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

Substance and Purpose: The purpose of a surface water management area is to provide for the protection of

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

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

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

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

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 for permits and $2,000 for certificates 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 has been 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.

Alternatives: Alternatives 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, minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on this proposed regulation after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on this proposed regulation after the proposal is published in the Register of Regulations.

Public Comments: The board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives and other alternatives.

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

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Hearings Reporter, Management, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1905; Filed July 21, 1993, 11:16 a.m.

Notice of Intended Regulatory Action

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

This reissuance of the notice to restart the adoption process is necessary because of changes in the Administrative Process Act which were enacted during the 1993 General Assembly.

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

Substance and Purpose: The purpose of a surface water management area is to provide for the protection of beneficial uses of designated surface waters of the Commonwealth during periods of drought by managing the supply of surface water in order to balance competing beneficial uses. By adopting this regulation th Commonwealth is protecting the beneficial uses of th

James River in the Richmond metropolitan area for the public welfare, health and safety of the citizens of the Commonwealth.

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

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

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

Applicants for permits or certificates, except for certain agricultural uses, will have to pay a fee of up to $3,000 for permits and $2,000 for certificates 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 has been 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.

Alternatives: Alternatives 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, minimum instream flow levels, the boundaries of the area and guidelines for conservation and management plans.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on this proposed regulation after it is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on this proposed regulation after the proposal is published in the Register of Regulations.

Public Comments: The Board seeks written comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternatives and other alternatives.

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

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

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

VA.R. Doc. No. C93-1904; Filed July 21, 1993, 11:15 a.m.

† 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 680-15-07. General Virginia Water Protection Permit Regulations for Minor Road Crossings, Associated Fills and Channel Modifications.** The purpose of the proposed action is to establish standard conditions for accomplishing the construction of minor road crossings with their associated fills and stream crossings. Provisions will be included to address the protection of state waters and endangered species.

Basis and Statutory Authority: The basis for these regulations is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15:5 authorizes the board to issue Virginia Water Protection Permits (VWPP) for activities which require a Water Quality Certification under Section 401 of the Clean Water Act. Section 62.1-44.15(5) authorizes the board to issue permits for the discharge of treated sewage, industrial wastes or other wastes into or adjacent to state waters and § 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 State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program; § 62.1-44.15(14) authorizes the 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 or investigations, and § 62.1-44.21 authorizes the State

Water Control Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 401 of the Clean Water Act (Act) (33 USC 1251 et seq.) requires that any applicant for a federal license or permit to conduct any activity, including but not limited to, the construction and operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the state in which the discharge originates or will originate, that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Act. No license or permit will be granted until such a certification has been obtained or has been waived by the State. In cases where the request for certification has been denied by the state, no federal permit or license will be granted.

Need: Most road crossing construction involves the discharge of fill materials for road approaches to bridges, instream support piers, footings, box and pipe culvert placement, as well as excavation, channelization and other instream modifications for proper alignment and placement of the structure to be utilized for crossing state waters, including wetlands. Any such activity is considered a discharge under the Clean Water Act and State Water Control Law, and is therefore subject to regulation through the VWPP permit program.

Substance and Purpose: The intent of this general permit regulation is to establish standard conditions for accomplishing the construction of minor road crossings with their associated fills and stream channel modifications. Minor Road Crossings are defined as impacting 100 linear feet or less of surface waters and/or one third acre or less of wetlands. Provisions will be included to address the protection of state waters and endangered species. Language will also be included which requires that the least impacting structure be utilized in all waters.

Monitoring and reporting requirements will be established based upon the water quality degradation potential of the road crossing construction, finished structure, and any mitigation necessary as part of the project for which this general permit is issued. The reporting provisions will assist in evaluating the effectiveness of the steps taken to reduce impacts to state waters, the success of any mitigation necessary, provide information to identify water quality impacts and support future permitting activities.

Estimated Impact: Adoption of this regulation will allow for the streamlining of the permit process as it relates to the covered categories of discharges. Coverage under the general VWP permits would reduce the paper work and expense of obtaining a permit for the owners and operators in this category. It will also reduce the time currently required to obtain coverage under the VWPP permitting system. The staff estimates that there are approximately 500 projects within this category of discharges that may be covered by VWP permits.

The board recognizes the need for general VWP permits to ease the burden on the regulated community and to facilitate the issuance of timely permits while maintaining water quality protection of state waters. Issuance of general permits would improve the administrative efficiency of the board's permitting program and allow staff resources to be concentrated on developing individual permits for those facilities which have more potential for impacting water quality in Virginia.

Alternatives: There are two alternatives to comply with the requirements to permit minor road crossings. One is to issue an individual VWPP permit for each of the estimated 500 minor road crossings. The other is to adopt a general VWPP permit to cover this category of discharger.

Public Comments: The board seeks oral and written comments from interested persons on the intended regulatory action, on the costs and benefits of the stated alternatives, or other alternatives.

In addition, the board will hold public meetings to receive views and comments and to answer questions of the public on the following dates: Monday, September 27, 1993, in the Norfolk City Council Chambers, City Hall Building, 11th Floor, 810 Union Street, Norfolk at 7 p.m.; Tuesday, September 28, 1993, in the Board Room at the Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen at 7 p.m.; Wednesday, September 29, 1993, in the Board Chambers, McCourt Building, Prince William County Administration Center, 1 County Complex, 4859 Davis Ford Rd., Prince William at 2 p.m.; and, Thursday, September 30, 1993, in the Community Room, Roanoke County Administration Center, 3738 Brambleton Ave., S. W., Roanoke at 2 p.m..

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Donnie 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 4 p.m., Friday, September 17, 1993.

Advisory Committee/Group: The board seeks comments on whether the agency should form an ad hoc advisory group, use a standing advisory committee or consult with groups or individuals to assist in the drafting and formation of the proposal. In addition the board seeks the names of individuals who would be interested in serving on an ad hoc advisory group.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be

convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

Statutory Authority: § 62.1-44.2 et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Martin Ferguson, Department of Environmental Quality, P.O Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2002; Filed August 3, 1993, 3:41 p.m.

† 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 amending regulations entitled: **VR 680-16-02. Roanoke River Basin Water Quality Management Plan.** The purpose of the proposed action is to amend the Roanoke River Basin Water Quality Management Plan by deleting the references to the Smith-Dan River subarea.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which water quality management plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Roanoke River Basin WQMP was adopted by the board in 1976. Since that time the Smith-Dan subarea has grown in population and developed unique problems associated with population growth and development not seen in the other areas covered by the Roanoke River Basin WQMP. Furthermore, the information on the Smith-Dan River Subarea portion of that plan has not been updated to reflect current data, scientific studies; and, new or revised legislation, procedures, policy, and regulations. By preparing a separate WQMP, the board will be better able to focus on the important issues facing the Smith-Dan River Subarea.

Substance and Purpose: Water quality management plans set forth measures for the State Water Control Board to implement in order to reach and maintain water quality goals. The purpose of this proposal is to amend the existing Roanoke River Basin WQMP by deleting references for those areas to be covered by the new Smith-Dan Subarea WQMP (VR 680-16-02.2). The new Plan will update those portions of the Roanoke River Basin WQMP in the Smith-Dan River Subarea and bring the plan into compliance with federal law.

Estimated Impact: No major impacts on the regulated community are anticipated as a result of the proposed amendments to the Roanoke River Basin WQMP. There are currently 90 permitted facilities and approximately 218,000 persons residing in the Smith-Dan Subarea, who will be directly affected by the proposed plan. Changes in segment classification will be made in the plan by adding water quality limited segments for fecal coliform for the South Fork of the Mayo River, Sandy River, and several other tributaries and by adding water quality limited segments for ammonia to a number of small tributaries.

Alternatives: The Smith-Dan River Subarea has not been updated to reflect current data, scientific studies; new or revised legislation, procedures, policy, and regulations; and changes in area growth and development since the Roanoke River Basin WQMP was adopted. One alternative is to continue to use the outdated Roanoke River Basin WQMP. To do this would result in noncompliance with the amendments to the Clean Water Act for achieving current water quality goals. A second alternative is to update the existing plan. While this is possible, it would be a very long process. Furthermore, the current Roanoke River Basin WQMP is presented in four lengthy volumes with emphasis on the upper basin area. The board is interested in focusing more attention on the special issues and needs of the Smith-Dan Subarea, updating information for the subarea and meeting new regulatory requirements and believes that a separate plan is warranted.

Public Comments: The board seeks written and oral comments from interested persons on the costs and benefits of the stated alternatives or other alternatives. In addition, the Board will hold a public meeting at 7:00 p.m. on Thursday, September 30, 1993, at the Henry County Administration Building, Board Room, Kings Mountain Road, Collinsville, Virginia, to receive comments from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

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, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230 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 4 p.m., Monday, September 20, 1993.

Statutory Authority: § 62.1-44.15(10) et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Martin Ferguson, Department of Environmental Quality, P.O Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2000; Filed August 3, 1993, 3:41 p.m.

† 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 680-16-02.02. Smith-Dan River Subarea Water Quality Management Plan.** The purpose of the proposed action is to adopt a new Smith-Dan River subarea water quality management plan.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which water quality management plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Roanoke River Basin WQMP was adopted by the board in 1976. Since that time the Smith-Dan subarea has grown in population and developed unique problems associated with population growth and development not seen in the other areas covered by the Roanoke River Basin WQMP. Furthermore, the information on the Smith-Dan River Subarea portion of that plan has not been updated to reflect current data, scientific studies; and, new or revised legislation, procedures, policy, and regulations. By preparing a separate WQMP, the board will be better able to focus on the important issues facing the Smith-Dan River Subarea.

Substance and Purpose: Water quality management plans set forth measures for the State Water Control Board to implement in order to reach and maintain water quality goals. The purpose of this proposal is to amend the existing Roanoke River Basin WQMP by deleting references for those areas to be covered by the new Smith-Dan Subarea WQMP. The new Plan will focus attention on the unique problems and issues within the Smith-Dan Subarea, update those portions of the Roanoke River Basin WQMP in the Smith-Dan River Subarea and bring the plan into compliance with federal law.

Estimated Impact: There are currently 90 permitted facilities and approximately 218,000 persons residing in the Smith-Dan Subarea, who will be directly affected by the plan. Changes in segment classification will be made in the plan by adding water quality limited segments for fecal coliform for the South Fork of the Mayo River, Sandy River, and several other tributaries and by adding water quality limited segments for ammonia to a number of small tributaries.

Alternatives: The Smith-Dan River Subarea has not been updated to reflect current data, scientific studies; new or revised legislation, procedures, policy, and regulations; and changes in area growth and development since the Roanoke River Basin WQMP was adopted. One alternative is to continue to use the outdated Roanoke River Basin WQMP. To do this would result in noncompliance with the amendments to the Clean Water Act for achieving current water quality goals. A second alternative is to update the existing plan. While this is possible, it would be a very long process. Furthermore, the current Roanoke River Basin WQMP is presented in four lengthy volumes with emphasis on the upper basin area. The board is interested in focusing more attention on the special issues and needs of the Smith-Dan Subarea, updating information for the subarea and meeting new regulatory requirements and believes that a separate plan is warranted.

Public Comments: The board seeks written and oral comments from interested persons on the costs and benefits of the stated alternatives or other alternatives. In addition, the Board will hold a public meeting at 7 p.m. on Thursday, September 30, 1993, at the Henry County Administration Building, Board Room, Kings Mountain Road, Collinsville, Virginia, to receive comments from the public.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed regulation after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on the proposed regulation after the proposal is published in the Register of Regulations.

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, Water Division, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230 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 4 p.m., Monday, September 20, 1993.

Statutory Authority: § 62.1-44.15(10) et seq. of the Code of Virginia.

Written comments may be submitted until 4 p.m. on October 5, 1993, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Wellford Estes, Department of Environmental Quality, P.O Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

VA.R. Doc. No. C93-2001; Filed August 3, 1993, 3:40 p.m.

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 amending regulations entitled: **VR 680-21-00. Water Quality Standards.** The purpose of the proposed action is to amend Water Quality Standards to meet state and federal requirements for a complete review of the water quality standards once every three years, modify the standards to ensure that water quality is protected, to update beneficial water uses, to cancel obsolete standards, and to designate exceptional waters.

This is a reissuance of the notice to start the adoption process for the triennial review of the water quality standards and to modify VR 680-21-07 and VR 680-21-08 (scenic rivers, endangered species, nutrient enriched waters, special standards, trout waters and public water supplies). This reissuance of the notice to restart the adoption process is necessary because of the changes in the Administrative Process Act which were enacted during the 1993 General Assembly. This notice also serves to begin the adoption process for exceptional waters under VR 680-21-01.3.C (Antidegradation Policy).

The type of information that would help the department draft these amendments includes but is not limited to the following:

☐ information to update existing standards or to add new standards (especially for toxic pollutants),

☐ information related to site specific modifications to water quality standards for metals (water effects ratios),

☐ suggestions for a narrative biological criteria,

☐ evaluations of the 1986 Environmental Protection Agency's bacteria and dissolved oxygen criteria,

☐ provisions to ensure that standards apply to wetlands,

☐ information related to the designation of endangered species waters in Virginia (including protection areas or buffer zones upstream of endangered species locations),

☐ information related to the designation of nutrient enriched waters, trout waters or public water supplies in Virginia,

☐ information or nominations related to the designation of "exceptional" waters under VR 680-21-01.3C (Antidegradation Policy).

Any amendments to the water quality standards proposed as a result of the triennial review amendments have the potential to impact every VPDES permit holder in the Commonwealth of Virginia. The impact on an individual VPDES permit holder would range from additional monitoring costs through upgrades to existing wastewater facilities.

Impacts resulting from stream reclassifications will be primarily upon those permitees discharging into endangered species waters. Certain requirements (VR 680-21-02.22.5) apply in these waters such that any VR 680-21-07 (Endangered Species, Scenic Rivers and Nutrient Enriched Waters), to the River Basin Section Tables in VR 680-21-08 (trout waters and public water supplies) and to the Antidegradation Policy in VR 680-21-01.3.C (exceptional waters). Other alternatives are whether to make amendments related to the issues described under "Substance and Purpose."

Public Comments: The board seeks written comments from interested persons on the intended regulatory actions and on the cost and benefits of the stated actions. Written comments should be directed to Ms. Doneva Dalton, Hearings Reporter, at the address below and must be received by 4 p.m. on September 8, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on these proposed regulatory actions after they are published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a hearing (evidential) on these proposed regulations after the proposal is published in the Register of Regulations.

Applicable laws and regulations include Section 303(c)(2)(B) and Section 307(a) of the Clean Water Act, the Federal Water Quality Standards Regulation (40 CFR 131), State Water Control Law, VR 680- 21-00 (Water Quality Standards Regulations) and VR 680-14-01 (Permit Regulation).

Statutory Authority: § 62.1-44.15(3a) of the Code of

Virginia.

Written comments may be submitted until 4 p.m. on September 8, 1993, to Ms. Doneva Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

Contact: Ms. Elleanore Daub, Office of Environmental Research and Standards, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5091.

VA.R. Doc. No. C93-1903; Filed July 21, 1993, 11:15 a.m.

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 amending regulations entitled: **VR 680-21-00. Water Quality Standards (VR 680-21-07:1.b. Potomac Embayment Standards).** The purpose of the proposed action is to consider amendments to the Potomac Embayment standards.

Need: The board adopted the Potomac Embayment Standards (PES) in 1971 to address serious nutrient enrichment problems evident in the Virginia embayments and Potomac River at that time. These standards apply to sewage treatment plants discharging into Potomac River embayments in Virginia from Jones Point to the Route 301 bridge and for expansions of existing plants discharging into the nontidal tributaries of these embayments.

Based upon these standards, several hundred million dollars were spent during the 1970s and 1980s upgrading major treatment plants in the City of Alexandria and the Counties of Arlington, Fairfax, Prince William, and Stafford. Today these localities operate highly sophisticated advanced wastewater treatment plants which have contributed a great deal to the dramatic improvement in the water quality of the upper Potomac estuary.

Even before the planned upgrades at these facilities were completed, questions arose over the high capital and operating costs that would result from meeting all of the requirements contained in the PES. Questions also arose due to the fact that the PES were blanket effluent standards that applied equally to different bodies of water. Therefore, in 1978, the Board committed to reevaluate the PES. In 1984, a major milestone was reached when the Virginia Institute of Marine Science (VIMS) completed state-of-the-art models for each of the embayments. The Board then selected the Northern Virginia Planning District Commission (NVPDC) to conduct waste load allocation studies of the Virginia embayments using the VIMS models. In 1988, these studies were completed and effluent limits were developed for each major facility that would protect the embayments and the mainstem of the Potomac river. However, the PES were not amended to reflect the results of these efforts.

Since the PES have not been amended or repealed, VPDES permits have included the PES standards as effluent limits. Since the plants cannot meet all of the requirements of the PES, the plant owners have operated under consent orders or consent decrees with operating effluent limits for the treatment plants that were agreed upon by the owners and the Board.

In 1991, several Northern Virginia jurisdictions with embayment treatment plants submitted a petition to the board requesting that the Board address the results of the VIMS/NVPDC studies and that the PES be replaced with a descriptive process for establishing effluent limits for these plants to meet water quality standards. The petitioners claimed the current standards do not allow for scientifically based permit limits.

A board staff workgroup was formed to consider the changes to the PES recommended by the petitioners. At their June 1991 meeting, the board authorized holding a public hearing to solicit comments on proposed amendments based upon the recommendations of the work group. These amendments would allow permit by permit development of appropriate effluent limits for the affected discharges using the Board's Permit Regulation and Water Quality Standards Regulation. They would also apply a total phosphorus effluent limit of 0.18 mg/l which is the regionally agreed limit to protect the embayments and the upper Potomac estuary from nutrient enrichment.

Based upon the request of Fairfax County, a hearing was not scheduled on the proposed amendments so the petitioners could consider revisions to their original petition. By letter dated October 28, 1992, Fairfax County requested the board to proceed with a revised petition to change the PES. The revised petition was supported by the Counties of Arlington, Prince William, and Stafford and the Alexandria Sanitation Authority.

Substance and Purpose: The purpose of this proposed regulatory action is to consider amendments to the Potomac Embayment Standards.

Under the recent petition from the Northern Virginia localities for amending the PES, minimum effluent limits are retained in the Standards and state-of-the-art modeling is required to be performed for construction of any major new plant or expansion of an existing plant.

Information on the following issues would help the Board develop appropriate amendments to the PES:

- ☐ adopting the amendments included with the revised petition from the local governments,
- ☐ repealing the Potomac Embayment Standards and using the Permit Regulation and Water Quality Standards Regulation to determine effluent limits,
- ☐ replacing the standards with a comprehensive policy to protect the embayments (similar to the approach

used with the Occoquan Policy),

☐ coverage of existing small sewage treatment plants and single family home discharges by the Potomac Embayment Standards.

Estimated Impact: Amendments to the Potomac Embayment Standards would impact eight major and several smaller sewage treatment plants discharging to the Potomac embayments. Upgrading the existing treatment plants to meet the current standards would cost millions of dollars. The alternatives identified thus far for amending the current standards would result in significant cost savings.

Alternatives: Three alternatives have so far been identified: 1. no change to the current standards; 2. amend the standards to remove specific effluent limits and rely on the Permit Regulation and Water Quality Standards Regulation (approach previously authorized for hearing by the Board); or 3. amend the standards by changing the specific effluent limits (local government petition).

Public Meeting: The board will hold a public meeting to receive views and comments on the local government petition as well as other comments on amending the Potomac Embayment Standards. The meeting will be held at 7:00 p.m. on Thursday, September 16, 1993, Fairfax County Government Center, Conference Center, Rooms 4 & 5, 12000 Government Center Parkway, Fairfax.

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 Mrs. Doneva A. Dalton at the address listed 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 Wednesday, September 1, 1993.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 23, 1993, to Ms. Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

Contact: Alan E. Pollock, Chesapeake Bay Program, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

VA.R. Doc. No. C93-1907; Filed July 21, 1993, 11:17 a.m.

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 amending regulations entitled: **VR 680-41-01:1. Public Participation Guidelines.** The purpose of this proposed action is to amend, on a permanent basis, the board's guidelines such that the guidelines will comply with 1993 amendments to the Administrative Process Act (Act). Specifically, the Act imposes new requirements on agencies of state government for processing rulemakings under the Act. For example, the Act requires the board to set out in their guidelines any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the board intends to use in addition to the Notice of Intended Regulatory Action. Also, the Act mandates that the board include in their guidelines a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the Board.

Need: This proposed regulatory action is necessary in order to establish guidelines which comply with the 1993 amendments to the Act and replace emergency guidelines which became effective on June 29, 1993.

Estimated Impact: No financial impact on regulated entities or the public is expected from any proposed amendments to the Guidelines since the Guidelines only impose requirements on the board. Regulated entities and the public should benefit from the proposed amendments in that the guidelines will comply with the amendments to the Act.

Alternatives: There is no alternative to taking regulatory action to amend the board's guidelines. The Act requires the board to adopt guidelines and any guidelines adopted must comply with the provisions of the Act.

Public Comments: The Board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of any alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. In addition, the board's staff will participate in a joint public meeting to be held at 2:00 p.m. on Thursday, September 9, 1993, in the Board Room, Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: The meetings are being held at public facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Dalton at the address below or be telephone at (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, August 23, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The Board intends to hold an informational proceeding (informal hearing) on the proposed amendments to the guidelines after the proposal is

published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a public hearing (evidential) on the proposed amendments to the Guidelines after the proposal is published in the Register of Regulations.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15(7) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on September 15, 1993, to Ms. Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230.

Contact: Ms. Cindy M. Berndt, Policy and Planning Supervisor, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 327-5158.

VA.R. Doc. No. C93-1908; Filed July 21, 1993, 11:10 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waterworks and Wastewater Works Operators intends to consider repealing regulations entitled: **VR 675-01-01. Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation during the comment period.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1944; Filed June 24, 1993, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waterworks and Wastewater Works Operators intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to promulgate public participation guidelines to replace emergency public participation guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation formation and promulgation process. The agency does not intend to hold a public hearing on the proposed regulation during the comment period.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until September 8, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1944; Filed June 24, 1993, 2:28 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waterworks and Wastewater Works Operators intends to consider amending regulations entitled: **VR 675-01-02. Board for Waterworks and Wastewater Works Operators.** The purpose of the proposed action is to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity and cost of compliance in accordance with its public participation guidelines. A public hearing will be held during the proposed comment period.

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

Written comments may be submitted until September 10, 1993.

Contact: Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VA.R. Doc. No. C93-1923; Filed July 21, 1993, 11:56 a.m.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

BOARD OF YOUTH AND FAMILY SERVICES

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: **Standards for Intensive Community Supervision.** The purpose of the proposed action is to set minimum standards for the care and custody of youth in intensive community supervision programs. These standards

apply to the following types of programs: Home-Based Family Treatment Services; Intensive Home Supervision Services; Serious Offender Services; Alternative Day Services; Assessment and Evaluation Services Crisis Management Services; Electronic Monitoring Services. The board intends to hold a public hearing on these standards.

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

Written comments may be submitted until September 9, 1993.

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

VA.R. Doc. No. C93-1894; Filed July 21, 1993, 9:49 a.m.

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 Secure Juvenile Detention Facilities.** The purpose of the proposed action is to set minimum operation standards for the care and custody of youth in secure detention facilities. This new proposed regulation replaces proposed standards as published in the Register of Regulations as VR 690-30-001 on November 18, 1991. The board intends to hold a public hearing on these standards.

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

Written comments may be submitted until September 9, 1993.

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

VA.R. Doc. No. C93-1895; Filed July 21, 1993, 9:49 a.m.

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.

BOARD OF MEDICINE

Title of Regulations: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.**

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

Public Hearing Date: N/A – Written comments may be submitted until October 27, 1993.
(See Calendar of Events section for additional information)

Basis: Sections 54.1-100 through 54.1-114, 54.1-2400, and 54.1-2914 A 12 through 14 of the the Code of Virginia provide the statutory basis for promulgation of these amendments by the Board of Medicine.

Purpose: The proposed amendments are designed to ensure the public protection by establishing standards for licensure, examinations, and practice of medicine, osteopathy, podiatry, chiropractic, clinical psychology, and acupuncture. Specific criteria of unprofessional advertising has been included in the amendments to ensure against possible fraudulent claims of practice. Criteria for pharmacotherapy has been included in the amendments to ensure a more standard practice provided to the citizens of the Commonwealth. Criteria for examination in medicine and osteopathy has been included in the amendments to ensure a more standard practice provided to the citizens of the Commonwealth. An examination fee has been included in the amendments to cover staff time.

The proposed amendments address: (i) misleading or deceptive advertising, (ii) pharmacotherapy for weight loss, (iii) examinations for licensure in medicine and osteopathy, and (iv) examination fee for licensure in medicine and osteopathy. In addition, a narrative statement lacking statutory authority was deleted as suggested by the Assistant Attorney General.

Substance: : Proposed changes are as follows:

§ 1.7 A establishes a separation between §§ 1.7 A and 1.7 B concerning misleading or deceptive advertising.

§ 1.7 B specifies that "Board Certified" advertising which is false, misleading or deceptive is unprofessional conduct as established in §§ 54.1-2403 and 54.1-2914 A 12 through 13 of the Code of Virginia.

§ 1.10 establishes standards for physician's professional conduct when prescribing, dispensing and administering pharmacotherapy for weight loss as established in § 54.1-2914 A 14 of the Code of Virginia.

§ 1.10 A specifies unprofessional conduct when prescribing amphetamine, Schedule II, for the purpose of weight reduction or control.

§ 1.10 B specifies unprofessional conduct when prescribing amphetamine-like drugs, Schedule III and IV, for the purpose of weight reduction, or control of obesity, and an appropriate exception.

§ 1.10 C specifies unprofessional conduct when prescribing amphetamine or amphetamine-like substances for use as an anorectic in children under 12 years of age.

The statement following § 2.2 A 3 d 6 and preceding § 2.2 A 4 was deleted. The deletion was recommended by the Assistant Attorney General and the board due to lack of statutory authority. The statement was included in the 1985 regulations due to problems then existing concerning foreign medical schools.

§ 3.1 A 1 clarifies terminology to coincide with that used by the United States Medical Licensing Examination (USMLE) concerning licensure examination by graduates of medical or osteopathic schools and postgraduate training.

§ 3.1 A 2 specifies which component of the FLEX examination must be passed before eligibility to sit for Step 3 of the USMLE. Clarifies terminology to coincide with that used by the USMLE concerning examination by medical or osteopathic school graduates and postgraduate training.

§ 4.1 B 4 establishes the USMLE as an alternative examination for licensure by endorsement for graduates of medicine, and clarifies the number of unsuccessful attempts allowed prior to further education requirements. In addition, for each series of three unsuccessful examination attempts, establishes the USMLE as an alternative examination for licensure by endorsement.

§ 4.1 B 5 establishes the requirement for medical graduates to provide evidence that Steps 1, 2, and 3 of the USMLE have been passed within a seven-year period concerning licensure by endorsement.

§ 4.1 C 4 establishes the USMLE as an alternativ examination for licensure by endorsement fo.

graduates of osteopathy and clarifies the number of unsuccessful attempts allowed prior to further education requirements. In addition, for each series of three unsuccessful examination attempts, establishes the USMLE as an alternative examination for licensure by endorsement.

§ 4.1 C 5 establishes the requirement for osteopathic graduates to provide evidence that Steps 1, 2, and 3 of the USMLE have been passed within a seven-year period concerning licensure by endorsement.

§ 7.1 A 1 establishes a fee for the USMLE examination.

Issues: Regulations are promulgated to respond to cases brought before the board concerning unprofessional conduct when advertising specialty training and certification.

Regulations are promulgated to respond to cases brought before the board concerning inappropriate prescriptions for weight loss.

The statement lacking statutory authority is deleted to create more succinct regulations.

Regulations are promulgated to respond to changes in national licensure examinations. The changes at the national level were a result of problems associated with foreign educated medical graduates concerning standardized examinations.

A regulation is promulgated to respond to changes in national licensure examinations and the related administration costs. Fees established for the new examination will be less than current fees, but will not impact upon the financial integrity of the board.

Estimated Impact:

A. Impact on the agency: The cost to the agency for the proposed amendments cannot be precisely determined at this time. However, it is anticipated that cost reductions from fewer cases adjudicated and increased revenues from examinations will offset anticipated cost increases. The cost increases will be due to one component of the new national examination administered by the board.

1. A reduction in costs due to less cases adjudicated; $5400 due to reduced advertising cases plus $21,600 due to reduced weight loss cases for a total savings of $26,000.

2. An increase in revenues due to 500 new examinations at $100/exam ($550 minus $450 per test paid to the Federation of State Medical Boards) for a total increase of $50,000.

3. An increase in costs incurred due to implementing the proposed amendments for examinations is $39,480.

TOTAL for reduction in costs plus increased revenues minus increased costs:

($26,000 + $50,000) minus ($39,480) = $36,520.

B. The funds to address all identified fiscal impacts of the Board of Medicine are derived fees paid by licensees, applicants for licensure and certification and examinations. All increases in costs will be offset by increased revenues.

C. Number and types of regulated entities affected:

1. Advertising:

22,190 Medical Doctors

450 Doctors of Osteopathy

450 Doctors of Podiatric Medicine

850 Doctors of Chiropractic

1,390 Doctors of Clinical Psychology

2. Pharmacotherapy for weight loss:

22,190 Medical Doctors

450 Doctors of Osteopathy

450 Doctors of Podiatric Medicine

3. Examination for licensure in medicine and osteopathy, and examination fee for licensure in medicine and osteopathy:

490 Medical Doctors

10 Doctors of Osteopathy

D. Projected costs to regulated entities for compliance are as follows:

1. Advertising requirements will result in a range of costs from low to moderate. For example, changing business cards may cost approximately $50 per licensee or changing yellow page advertising may cost $250-$400 per licensee. All costs would be incurred one time. The number of regulated entities affected are presented in C above.

2. Reduction in examination fees per year will save approximately 600 applicants $50 each. The number of regulated entities affected are presented in C above.

Summary:

The proposed amendments establish requirements governing the practice of medicine, osteopathy, podiatry, chiropractic, clinical psychology, and acupuncture in the Commonwealth. They include

requirements necessary to prevent misleading or deceptive advertising, standards for pharmacotherapy for weight loss, examination for licensure in medicine and osteopathy, and an examination fee for licensure in medicine and osteopathy.

The proposed amendments respond to continuing review of the regulations by the board and staff concerning (i) specification of board certification for advertising due to such cases brought to the board; (ii) specification of standards of care for prescriptions for weight loss due to such cases brought to the board; (iii) compliance with changes in national licensure examinations; (iv) coverage of examination costs as a result of changes in national licensure examination; and (v) deletion of regulation lacking statutory authority.

VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

A. The following words and terms, when used in these regulations, shall have the meaning ascribed to them in § 54.1-2900 of the Code of Virginia:

Acupuncture

Board

Clinical psychologist

Practice of clinical psychology

Practice of medicine or osteopathy

Practice of chiropractic

Practice of podiatry

The healing arts.

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

"American institution" means any accredited licensed medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located in the United States, its territories, or Canada.

"Approved foreign institution" means any foreign institution that is approved by the board under the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

"Foreign institution" means any medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located elsewhere than in the United States, its territories, or Canada.

"Home country" means the country in which a foreign institution's principal teaching and clinical facilities are located.

"Principal site" means the location in the home country where a foreign institution's principal teaching and clinical facilities are located.

§ 1.2. *Approval of foreign medical schools.*

A separate Virginia State Board of Medicine regulation, VR 465-02-02, Requirements for Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts, is incorporated by reference in these regulations. Prospective applicants for licensure in Virginia who studied at a foreign institution should refer to that regulation in addition to the regulations contained here.

§ 1.3. *Public Participation Guidelines.*

A separate board regulation, VR 465-01-01, entitled Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

§ 1.4. Advertising ethics.

A. Any statement specifying a fee for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency.

C. Advertisements of discounts shall disclose the full fee and documented evidence to substantiate the discounted fees.

§ 1.5. Vitamins, minerals and food supplements.

A. The use or recommendations of vitamins, minerals or food supplements and the rationale for that use or recommendation shall be documented by the practitioner. The rationale for said use must be therapeutically proven and not experimental.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in toxic doses.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

§ 1.6. Anabolic steroids.

It shall be considered unprofessional conduct for a licensee of the board to sell, prescribe, or administer anabolic steroids to any patient for other than accepted therapeutic purposes.

§ 1.7. Misleading or deceptive advertising.

A. A licensee or certificate holder's authorization of or use in any advertising for his practice of the term "board certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under § 54.1-2914 of the Code of Virginia, unless the licensee or certificate holder discloses the complete name of the specialty board which conferred the aforementioned certification.

B. It shall be considered unprofessional conduct for a licensee of the board to publish an advertisement which is false, misleading, or deceptive.

§ 1.8. Current business addresses.

Each licensee shall furnish the board his current business address. All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. Any change of address shall be furnished to the board within 30 days of such change.

§ 1.9. Solicitation or remuneration in exchange for referral.

It shall be unprofessional conduct for a licensee of the board to knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.1-179 of the Code of Virginia, or hospital as defined in § 32.1-123.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, § 1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

§ 1.10. Pharmacotherapy for weight loss.

A. It shall be unprofessional conduct for a physician to prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. It shall also be unprofessional conduct for a physician to prescribe amphetamine-like drugs, Schedules III and IV, for the purpose of weight reduction or control in the treatment of obesity, except as a short-term adjunct to a therapeutic regimen of weight reduction.

C. It shall be unprofessional conduct for a physician to prescribe amphetamine or amphetamine-like substances for use as an anorectic agent in children under 12 years of age.

PART II.
LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Licensure, general.

A. No person shall practice medicine, osteopathy, chiropractic, podiatry, acupuncture, or clinical psychology in the Commonwealth of Virginia without a license from this board, except as provided in § 4.3, Exemption for temporary consultant, of these regulations.

B. For all applicants for licensure by this board except those in clinical psychology, licensure shall be by examination by this board or by endorsement, whichever is appropriate.

C. Applicants for licensure in clinical psychology shall take the examination of the Virginia State Board of Psychology, which will recommend those qualifying to the Board of Medicine for licensure.

§ 2.2. Licensure by examination.

A. Prerequisites to examination.

1. Every applicant for examination by the Board of Medicine for initial licensure shall:

a. Meet the educational requirements specified in subdivision 2 or 3 of this subsection;

b. File the complete application and credentials required in subdivision 4 of this subsection with the executive director of the board not less than 75 days prior to the date of examination; and

c. Pay the appropriate fee, specified in § 7.1, of these regulations, at the time of filing the application.

2. Education requirements: Graduates of American institutions.

Such an applicant shall be a graduate of an American institution that meets the criteria of subdivision a, b, c, or d of § 2.2 A.2, whichever is appropriate to the profession in which he seeks to be licensed:

a. For licensure in medicine. The institution shall be a medical school that is approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

b. For licensure in osteopathy. The institution shall be a college of osteopathic medicine that is approved or accredited by the Committee on Colleges and Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

c. For licensure in podiatry. The institution shall be a school of podiatry approved and recommended by the Council on Podiatry Education of the American Podiatry Medical Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

d. For licensure in chiropractic.

(1) If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

(2) If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

3. Educational requirements: Graduates and former students of foreign institutions.

a. No person who studied at or graduated from a foreign institution shall be eligible for board examination unless that institution has been granted approval by the board according to the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

b. A graduate of an approved foreign institution applying for board examination for licensure shall also present documentary evidence that he:

(1) Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled two consecutive academic years at the institution's principal site.

(2) Received a degree from the institution; and

(3) Has fulfilled the applicable requirements of § 54.1-2930 of the Code of Virginia.

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.

c. A graduate of an approved foreign institution applying for examination for licensure in medicine or osteopathy shall also possess a standard Educational Council of Foreign Medical Graduates certificate (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a Province of Canada may be accepted in lieu of ECFMG certification.

d. An applicant for examination for licensure in medicine who completed all degree requirements except social services and postgraduate internship at an approved foreign institution shall be admitted to examination provided that he:

(1) Was enrolled at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled at the institution's principal site;

(2) Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association;

(3) Has completed the postgraduate hospital training required of all applicants for licensure as defined in § 54.1-2930 of the Code of Virginia; and

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.

(6) Presents a document issued by the approved foreign institution certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

~~These regulations are promulgated pursuant to § 54.1-2958 of the Code of Virginia and shall not be deemed to apply to graduates of foreign medical schools who matriculated before July 1, 1985. By resolution adopted at a public meeting on November 20, 1982, the board voted to promulgate the following regulations to be effective July 1, 1985, thereby placing potential foreign medical students on notice that such regulations would become effective on said date. Foreign medical students matriculating on and after July 1, 1985, should take care to determine whether their school satisfies these regulations before applying for licensure in Virginia. Inquiries may be directed to the board office at 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005, (804) 662-9908.~~

4. Credentials to be filed prior to examination.

Applicants shall file with the executive director of the board, along with their applications for board examination (and at least 75 days prior to the date of examination) the credentials specified in subdivisions a, b, or c of § 2.2 A 4, whichever are appropriate:

a. Every applicant who is a graduate of an American institution shall file:

(1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

b. Every applicant who attended a foreign institution shall file:

(1) The documentary evidence of education required by subdivisions 3 b, c, or d of this subsection, whichever is or are appropriate;

(2) For all such documents not in the English language, a translation made and endorsed by the consul of the home country of the applicant or by a professional translating service; and

(3) A complete chronological record of all professional activities since the applicant attended the foreign institution, giving location, dates, and types of services performed.

c. Every applicant discharged from the United States military service within the last 10 years shall in addition file with his application a notarized photostatic copy of his discharge papers.

B. Applicants for licensure by board examination shall take the appropriate examination prescribed by the board as provided in § 3.1 Examinations, of these regulations.

§ 2.3. Supervision of unlicensed persons practicing as psychologists in exempt settings.

A. Supervision.

Pursuant to subdivision 4 of § 54.1-3601 of the Code of Virginia, supervision by a licensed psychologists, shall mean that the supervisor shall:

1. Provide supervision of unlicensed personnel who are providing psychological services as defined in § 54.1-3600 and who are functioning in practice and title as a professional psychologist, including the review of assessment protocols, intervention plans and psychological reports, with review denoted by countersignature on all client records and reports as specified in the required protocols within 30 days of origination;

2. Determine and carry out instructional and evaluative consultation with supervisees appropriate to their levels of training and skill, and adjust their service delivery according to current standards of professional practice; and

3. Supervise only those psychological services that fall within the supervisor's area of competence as demonstrated by his own professional practice and experience.

B. Reporting.

A clinical psychologist who is providing supervision, as provided for in subdivision 4 of § 54.1-3601, shall:

1. Submit to the board, within 120 days of the effective date of this regulation, a copy of the supervisory protocol established for each unlicensed supervisee and signed by the supervisor, supervisee, and authorized representative of the institution or agency.

2. Notify the board of any changes in supervisory relationships, including terminations or additions, prior to or within 10 days of such change, with copies of supervisory protocol for all new supervisory relationships to follow within 30 days of such notice.

PART III.
EXAMINATIONS.

§ 3.1. Examinations, general.

The following general provisions shall apply for applicants taking Board of Medicine examinations:

A. Applicants for licensure in medicine and osteopathy may take Components I and II of the Federation Licensing Examination (FLEX) separately or as a unit. However, in no case shall an applicant who has not passed Component I be eligible to sit for Component II as a separate examination. The examination results shall be reported to the candidate as pass/fail.

1. Applicants for licensure in medicine and osteopathy may be eligible to sit for ~~Section~~ *Step* 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed ~~Sections~~ *Steps* 1 and 2 of the United States Medical Licensing Examination (USMLE).

2. Applicants who have successfully passed ~~one component~~ *Component I* of the FLEX may ~~, upon evidence of having passed one component of the FLEX,~~ be eligible to sit for ~~Section~~ *Step* 3 of the United States Medical Licensing Examination (USMLE) for licensure in Virginia.

B. Applicants who have taken both Components I and II of the Federation Licensing Examination (FLEX), in one sitting, and have failed to pass both components, or have taken and passed only one component in another state or territory of the United States, the District of Columbia, or Province of Canada, and have met all other requirements for licensure in Virginia may be eligible to take the failed or missing component upon payment of the fee prescribed in § 7.1.

C. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination, Parts I and II, to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia. The examination results shall be reported to the candidate as pass/fail.

D. Applicants for licensure in chiropractic shall provide evidence of having passed the National Board of Chiropractic Examiners Examination, Parts I, II and III, to be eligible to sit for the Virginia licensure examination administered by the board. Applicants who graduated prior to January 31, 1991, shall not be required to show evidence of having passed the National Board of Chiropractic Examiners Examination Part III to be eligible to sit for the licensure examination required by the board. A minimum score of 75 is required to pass the examination.

§ 3.2. Reexamination.

An applicant for licensure by examination who fails three consecutive attempts to pass the examination(s) administered by the board shall be eligible to sit for another series of three consecutive attempts upon presenting proof to the Credentials Committee of the board that he has fulfilled the requirements of subsection A, B, or C of this section, whichever is appropriate.

A. An applicant for licensure in medicine or osteopathy who fails three consecutive attempts to pass Component I and Component II, or Parts I, II, and III of the FLEX examination or the United States Medical Licensin Examination in Virginia or any other state or territory c

the United States, the District of Columbia, or Province of Canada, or a combination of either of these examinations, shall engage in one year of additional postgraduate training to be obtained in a hospital in the United States or Canada approved by the American Medical Association or the American Osteopathic Association.

B. An applicant for licensure in podiatry who fails three consecutive attempts to pass the Virginia examination administered by the board shall appear before the Credentials Committee of the board and shall engage in such additional postgraduate training as may be deemed appropriate by the Credentials Committee.

C. An unsuccessful candidate for chiropractic licensure after each series of three unsuccessful attempts for licensure by examination, shall engage in one year of additional professional training approved by the board before he will be eligible to retake another series of examinations.

§ 3.3. Administration of examination.

A. The board may employ monitors for the examination.

B. For examinations given by the board other than those for which answer sheets are furnished, plain paper shall be used, preferably white, and no reference shall be made indicating either school or date of graduation. One side of paper only may be written upon and as soon as each sheet is finished, it shall be reversed to prevent its being read by others.

C. Questions will be given out and papers collected punctually at the appointed time and all papers shall be handed in at once when expiration time is announced by the chief proctor.

D. Sections of the examination shall be in such sequence as may be determined by the Federation Licensure Examination (FLEX) Committee or appropriate testing agency.

E. The order of examination shall be posted or announced at the discretion of the board. If the board has no objections, the examiners may exchange hours or days of monitoring the examination.

F. For the guidance of examiners and examinees, the following rules shall govern the examination.

1. Only members of the board, office staff, proctors, and applicants shall be permitted in the examination room, except by consent of the chief proctor.

2. Applicants shall be seated as far apart as possible at desks or desk chairs and each shall have in plain view an admission card bearing his number and photograph.

3. No examinee shall have any compendium, notes or textbooks in the examination room.

4. Any conversation between applicants will be considered prima facie evidence of an attempt to give or receive assistance.

5. Applicants are not permitted to leave the room except by permission of and when accompanied by an examiner or monitor.

6. The use of unfair methods will be grounds to disqualify an applicant from further examination at that meeting.

7. No examiner shall tell an applicant his grade until the executive director has notified the applicant that he has passed or failed.

8. No examination will be given in absentia or at any time other than the regularly scheduled examination.

9. The chief proctor shall follow the rules and regulations recommended by the FLEX Test Committee or other testing agencies.

§ 3.4. Scoring of examination.

Scores forwarded to the executive director shall be provided to the candidate within 30 days or receipt of the scores provided by the testing service.

PART IV.
LICENSURE BY ENDORSEMENT.

§ 4.1. Licensure by endorsement.

A. An applicant for licensure by endorsement will be considered on his merits and in no case shall be licensed unless the Credentials Committee is satisfied that he has passed an examination equivalent to the Virginia Board of Medicine examination at the time he was examined and meets all requirements of Part II of these regulations.

B. A Doctor of Medicine who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Medical Examiners, FLEX, United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice medicine and surgery by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of medicine approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate

Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training.

2. Graduates of schools of medicine not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of the curriculum of a foreign medical school, shall serve the clerkships in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received.

3. Graduates of schools of medicine not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three year requirement when such training or study has occurred in the United States or Canada and is:

a. An approved fellowship program; or

b. A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. An applicant for licensure by the FLEX examination *or the United States Medical Licensing Examination* who has experienced ~~more than~~ three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX *or the United States Medical Licensing Examination* to be eligible for licensure to practice medicine and surgery in Virginia.

5. Applicants who have sat for the United States Medical Licensing Examination shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

C. A Doctor of Osteopathy who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Osteopathic Examiners may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice osteopathy by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of osteopathy approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the American Osteopathic Association, the American Medical Association, Licensing Medical Council of Canada or other official accrediting body recognized by the American Osteopathic Association, or the American Medical Association for intern or residency training.

2. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of curriculum of a foreign osteopathic school, shall serve the clerkships in an approved hospital, institution or school of osteopathy or medicine offering an approved residency program in the specialty area for the clinical training received.

3. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a hospital approved by the American Osteopathic Association, the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Osteopathic Association, or the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three year requirement when such training or study has occurred in the United States or Canada and is:

a. An approved fellowship program; or

b. A position teaching osteopathic or medical students, interns, or residents in an osteopathic or medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. An applicant for licensure by the FLEX examination *or the United States Medical Licensing Examination* who has experienced ~~more than~~ three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX *or the United States Medical Licensing Examination* to be eligible for licensure to practice osteopathy and surgery in Virginia.

5. Applicants who have sat for the United States Medical Licensing Examination shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

D. A Doctor of Podiatry who meets the requirements of Part II of these regulations, and has passed the National Board of Podiatry Examiners examination and has passed

a clinical competence examination equivalent to the Virginia Board of Medicine examination may be accepted for licensure by endorsement without further examination.

E. A Doctor of Chiropractic who meets the requirements of Part II of these regulations, who has passed the National Board of Chiropractic Examiners examination, and has passed an examination equivalent to the Virginia Board of Medicine Part III examination, may be accepted for licensure without further examination.

§ 4.2. Licensure to practice acupuncture.

Acupuncture is an experimental therapeutic procedure, used primarily for the relief of pain, which involves the insertion of needles at various points in the human body. There are many acupuncture points, and these points are located on most portions of the human body. Insufficient information is available regarding the general usefulness of acupuncture and the risks attendant. Among the risks that attend upon it are the possibilities of prolonged and inappropriate therapy. It is clear that the administration of acupuncture is accompanied by the possibility of serious side effects and injuries, and there are reported cases of such injuries. Possible complications and injuries include peritonitis, damage from broken needles, infections, serum hepatitis, acquired immunity deficiency syndrome, pneumothorax, cerebral vascular accident (stroke), damage to the eye or the external or middle ear, and the inducement of cardiac arrhythmia.

In the judgment of the board, acupuncture shall be performed only by those practitioners of the healing arts who are trained and experienced in medicine, as only such a practitioner has (i) skill and equipment to determine the underlying cause of the pain; (ii) the capability of administering acupuncture in the context of a complete patient medical program in which other methods of therapeutics and relief of pain, including the use of drugs and other medicines, are considered and coordinated with the acupuncture treatment; and (iii) skill and training which will minimize the risks attendant with its use.

Based on the foregoing considerations, the board will license as acupuncturists only doctors of medicine, osteopathy, and podiatry, as only these practitioners have demonstrated a competence in medicine by passing the medicine/osteopathy licensure examination or podiatry licensure examination.

~~A.~~ No person shall practice acupuncture in the Commonwealth of Virginia without being licensed by the board to do so.

~~B.~~ The board shall license as acupuncturists only licensed doctors of medicine, osteopathy, and podiatry. Such licensure shall be subject to the following condition: The applicant shall first have obtained at least 200 hours of instruction in general and basic aspects, specific uses and techniques of acupuncture and indications and contraindications for acupuncture administration.

~~C.~~ A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot.

~~D.~~ The licensee shall maintain records of the diagnosis, treatment and patient response to acupuncture and shall submit records to the board upon request.

~~E.~~ Failure to maintain patient records of those patients treated with acupuncture or failure to respond to the board's request for patient records within 30 days shall be grounds for suspension or revocation of a license to practice acupuncture.

§ 4.3. Exemption for temporary consultant.

A. A practitioner may be exempted from licensure in Virginia if:

1. He is authorized by another state or foreign country to practice the healing arts;

2. Authorization for such exemption is granted by the executive director of the board; and

3. The practitioner is called in for consultation by a licensee of the Virginia ~~State~~ Board of Medicine.

B. Such practitioner shall not open an office or designate a place to meet patients or receive calls from his patient within this Commonwealth, nor shall he be exempted from licensure for more than two weeks unless such continued exemption is expressly approved by the board upon a showing of good cause.

PART V.
RENEWAL OF LICENSE; REINSTATEMENT.

§ 5.1. Renewal of license.

Every licensee who intends to continue his practice shall renew his license biennially during his birth month and pay to the board the renewal fee prescribed in § 7.1 ~~Fees.~~ of these regulations.

~~A.~~ A practitioner who has not renewed his license by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

~~B.~~ An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

§ 5.2. Reinstatement of lapsed license.

A practitioner who has not renewed his certificate in accordance with § 54.1-2904 of the Code of Virginia for two successive years or more and who requests reinstatement of licensure shall:

~~A.~~ *1.* Submit to the board a chronological account of his professional activities since the last renewal of his license; and

~~B.~~ *2.* Pay the reinstatement fee prescribed in § 7.1 of these regulations.

PART VI.
ADVISORY COMMITTEES AND PROFESSIONAL BOARDS.

§ 6.1. Advisory committees to the board.

A. Advisory Committee on Acupuncture.

The board may appoint an Advisory Committee on Acupuncture from licensed practitioners in this Commonwealth to advise and assist the board on all matters relating to acupuncture. The committee shall consist of three members from the state-at-large and two members from the board. Nothing herein is to be construed to make any recommendation by the Advisory Committee on Acupuncture binding upon the board. The term of office of each member of the committee shall be for one year or until his successor is appointed.

B. Psychiatric Advisory Committee.

1. The board may appoint a Psychiatric Advisory Committee from licensed practitioners in this Commonwealth to examine persons licensed under these regulations and advise the board concerning the mental or emotional condition of such person when his mental or emotional condition is an issue before the board. Nothing herein is to be construed to make any recommendations by the Psychiatric Advisory Committee binding upon the Board of Medicine.

2. The term of office for each member of the Psychiatric Advisory Committee shall be one year or until his successor is appointed.

PART VII.
FEES REQUIRED BY THE BOARD.

§ 7.1. Fees required by the board are:

A. Examination fee for medicine or osteopathy: The fee for the Federation Licensing Examination (FLEX) for Component I shall be $275 and Component II shall be $325. Upon successfully passing both components of the Federation Licensing Examination (FLEX) in Virginia, the applicant shall be eligible for licensure upon payment of a licensure fee of $125 to the board. *The fee for the United States Medical Licensing Examination (USMLE) shall be $550.*

B. Examination fee for podiatry: The fee for the Podiatry Licensure Examination shall be $325.

C. Examination fee for chiropractic: The fee for the Virginia Chiropractic Examination shall be $250.

D. The fees for taking the FLEX, podiatry, and chiropractic examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of a $100 fee, reschedule for the next time such examination is given.

E. The fee for rescoring the Virginia Chiropractic Examination or the Virginia Podiatry Examination shall be $75.

F. Certification of licensure: The fee for certification of licensure/grades to another state or the District of Columbia by the board shall be $25. The fee shall be due and payable upon submitting the form to the board.

G. The fee for a limited license issued pursuant to § 54.1-2936 of the Code of Virginia shall be $125. The annual renewal is $25.

H. The fee for a duplicate certificate shall be $25.

I. Biennial renewal of license: The fee for renewal shall be $125, due in the licensee's birth month. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

J. The fee for requesting reinstatement of licensure pursuant to § 54.1-2921 of the Code of Virginia shall be $750.

K. The fee for a temporary permit to practice medicine pursuant to § 54.1-2927 B of the Code of Virginia shall be $25.

L. The fee for licensure by endorsement for medicine, osteopathy, chiropractic, and podiatry shall be $300. A fee of $150 shall be retained by the board for a processing fee upon written request from the applicant to withdraw his application for licensure.

M. The fee for licensure to practice acupuncture shall be $100. The biennial renewal fee shall be $80, due and payable by June 30 of each even-numbered year.

N. Lapsed license: The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be $250 and shall be submitted with an application for licensure reinstatement.

O. The fee for a limited license issued pursuant to § 54.1-2937 shall be $10 a year. An additional fee for late renewal of licensure shall be $10.

P. The fee for a letter of good standing/verification to another state for a license shall be $10.

Q. The fee for taking the Special Purpose Examination (SPEX) shall be $350. The fee shall be nonrefundable.

R. Any applicant having passed one component of the FLEX examination in another state shall pay $325 to take the other component in the Commonwealth of Virginia.

NOTICE: The forms used in administering the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing National Boards Endorsement Application (HRB-30-034) Revised 10/91
Request for Endorsement of Certification by the National Board of Medical Examiners, Revised 1/93
Claims History Sheet
Request for Physician Profile
Clearance from other State Boards
Disciplinary Inquiries
Instructions Regarding the Chiropractic Examination
Application for a Certificate to Practice Chiropractic (HRB-30-058) Revised 9/3/87
General Information Regarding the Examination, Revised 11/23/92
Exam: Chiropractic Employment/Professional Activity Questionnaire
Instructions for Completing National Boards of Osteopathic Examiners Endorsement Application (HRB-30-034) Revised 10/91
Application for a License to Practice Medicine/Osteopathy (DHP-30-056) Revised 7/24/89
Instructions for Completing Podiatry Endorsement Application (HRB-30-034) Revised 2/92
Application for a Certificate to Practice Podiatry (HRB-30-057) Revised 10/15/84
National Board of Podiatric Medical Examiners Request for Scores on Part I and II
Request for Podiatry Disciplinary Action
Licensure Registration

VA.R. Doc. No. R93-741; Filed August 2, 1993, 1:57 p.m.

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Title of Regulation: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.**

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

Public Hearing Date: N/A – Written comments may be submitted until October 25, 1993.
(See Calendar of Events section for additional information.

Basis: Section 54.1-2400 of the Code of Virginia provides the statutory basis for promulgation of these amendments by the Board of Medicine.

Purpose: The proposed amendments are designed to ensure the public protection by establishing standards for licensure, examinations and practice of physical therapy. Specific criteria for traineeships and examinations for physical therapists and physical therapist assistants have been included in the regulations to ensure a more standard practice provided to the citizens of the Commonwealth.

The proposed amendments address: (i) traineeship and examination requirements after inactive practice, and (ii) a processing fee for a withdrawn application.

Substance: The proposed changes (i) clarify traineeship and examination requirements when seeking licensure by endorsement after inactive practice; (ii) specify traineeship requirements when seeking licensure by endorsement after two to six years of inactive practice; (iii) specify traineeship and examination requirements when seeking licensure by endorsement after seven to 10 years of inactive practice; (iv) specify traineeship and examination requirements when seeking licensure by endorsement after more than 10 years of inactive practice; (v) specify examination requirements when seeking relicensure after seven to 10 years of inactive practice; (vi) specify examination requirements when seeking relicensure after more than 10 years of inactive practice; and (vii) establish a processing fee for a withdrawn application.

Issues: Regulations are promulgated to respond to possible deficiencies of minimal practice competency after a period of inactive physical therapy or physical therapy assistant practice concerning licensure by endorsement.

Regulations are promulgated to respond to possible deficiencies of minimal practice competency after a period of inactive physical therapy or physical therapy assistant practice concerning relicensure.

A regulation is promulgated to respond to withdrawn applications for physical therapist and physical therapist assistant licensure and adequate fees to cover staff time for such procedures.

Estimated Impact:

A. A minimal impact on staff time to verify traineeship and examination compliance concerning licensure by endorsement and relicensure. Increase verification can be absorbed by current staff.

B. The Board of Medicine funds are derived from fees paid by licensees, applicants for licensure and testing.

C. The number and types of regulated entities affected.

- 40 Physical Therapist Applicants per year.

- 10 Physical Therapist Assistant Applicants per year.

D. Projected costs to regulated entities for compliance are as follows:

1. Examination for physical therapy licensure when seeking licensure by endorsement will cost 40 applicants per year $200 each.

2. Examination for physical therapy assistant licensure when seeking licensure by endorsement will cost 10 applicants per year $200 each.

Summary:

The proposed amendments establish requirements governing the practice of physical therapy in the Commonwealth. They include specifications of traineeships and examinations required after inactive practice, and a processing fee for a withdrawn application.

The proposed amendments respond to continuing review of the regulations by the board and staff concerning (i) specification of traineeship and examination requirements after inactive practice when seeking licensure by endorsement; (ii) specification of traineeship and examination required after inactive practice when seeking relicensure; and (iii) establishment of a processing fee for a withdrawn application.

VR 465-03-01. Regulations Governing the Practice of Physical Therapy.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Board" means the Virginia Board of Medicine.

"Advisory board" means the Advisory Board on Physical Therapy.

"Evaluation" means the carrying out by a physical therapist of the sequential process of assessing a patient, planning the patient's physical therapy treatment program, and appropriate documentation.

"Examination" means an examination approved and prescribed by the board for licensure as a physical therapist or physical therapist assistant.

"Physical therapist" means a person qualified by education and training to administer a physical therapy program under the direction of a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

"Physical therapist assistant" means a person qualified by education and training to perform physical therapy functions under the supervision of and as directed by a physical therapist.

"Physical therapy aide" means any nonlicensed personnel performing patient care functions at the direction of a physical therapist or physical therapist assistant within the scope of these regulations.

"Referral and direction" means the referral of a patient by a licensed doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery to a physical therapist for a specific purpose and for consequent treatment that will be performed under the direction of and in continuing communication with the referring doctor or dentist.

"Trainee" means a person undergoing a traineeship.

1. *"Relicensure trainee"* means a physical therapist or physical therapist assistant who has been inactive for two years or more and who wishes to return to the practice of physical therapy.

2. *"Unlicensed graduate trainee"* means a graduate of an approved physical therapy or physical therapist assistant program who has not taken the state licensure examination or who has taken the examination but not yet received a license from the board or who has failed the examination three times as specified in § 3.3 A.

3. *"Foreign trained trainee"* means a physical therapist or physical therapist assistant who graduated from a school outside the United States, its territories, or the District of Columbia and who is seeking licensure to practice in Virginia.

"Traineeship" means a period of activity during which an unlicensed physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"Direct supervision" means a physical therapist is present and is fully responsible for the activities assigned to the trainee.

§ 1.2. A separate board regulation entitled VR 465-01-01, Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

PART II.
LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Requirements, general.

A. No person shall practice as a physical therapist or physical therapist assistant in the Commonwealth of Virginia except as provided in these regulations.

B. Licensure by this board to practice as a physical therapist or physical therapist assistant shall be by examination or by endorsement, whichever is appropriate.

§ 2.2. Licensure by examination: Prerequisites to examination.

A. Every applicant for initial board licensure by examination shall:

1. Meet the age and character requirements of §§ 54.1-2947 and 54.1-2948 of the Code of Virginia;

2. Meet the educational requirements prescribed in § 2.3 or § 2.4 of these regulations;

3. Submit the required application and credentials to the board not less than 30 days prior to the date of examination; and

4. Submit, along with his application, the examination fee prescribed in § 9.1, Fees, of these regulations.

B. Every applicant shall take the examination at the time prescribed by the board.

§ 2.3. Education requirements: Graduates of American institutions or programs.

A. A graduate of an American institution who applies for licensure as a physical therapist shall be a graduate of a school of physical therapy approved by the American Physical Therapy Association and shall submit to the board documented evidence of his graduation from such a school.

B. An applicant for licensure as a physical therapist assistant who attended an American institution shall be a graduate of a two-year college-level educational program for physical therapist assistants approved by the board and shall submit to the board documented evidence of his graduation from such a program.

§ 2.4. Educational requirement: Graduates of foreign institutions.

A. An applicant for licensure as a physical therapist or physical therapist assistant who graduated from a school outside the United States or Canada shall be a graduate of such a school which offers and requires courses in physical therapy acceptable to the board on the advice of the advisory board.

B. An applicant under this section for licensure as a physical therapist or physical therapist assistant, when filing his application and examination fee with the board, shall also:

1. Submit proof of proficiency in the English language by passing with a grade of not less than 560, the Test of English as a Foreign Language (TOEFL); or an equivalent examination approved by the board. TOEFL may be waived upon evidence of English proficiency.

2. Submit a photostatic copy of the original certificate or diploma verifying his graduation from a physical therapy curriculum which has been certified as a true copy of the original by a notary public.

3. If such certificate or diploma is not in the English language, submit either:

a. A translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification from the school attesting to the applicant's attendance and graduation date.

4. Submit verification of the equivalency of the applicant's education to the following standards from a scholastic credentials service approved by the advisory board.

a. The minimum educational requirements in general and professional education for licensure as a physical therapist shall be 120 semester hours as follows:

(1) General education requirements. 40 or more semester hours in the following subjects: humanities, social sciences, natural sciences, biological sciences and electives.

(2) Professional education requirements. 60 or more semester hours; the course of professional study shall include: basic health sciences, clinical sciences, clinical education, and other electives.

b. The minimum requirements in general and professional education for licensure as a physical therapist assistant shall be 68 semester hours as follows:

(1) General education requirements: 24 or more semester hours in the following subjects: humanities, social sciences, natural sciences, biological sciences, and electives.

(2) Professional educational requirements: 44 or more semester hours in the following course of professional study: basic health sciences, clinical sciences, clinical education, and electives.

c. Education requirements of foreign trained physical therapists or physical therapist assistants shall be equivalent to the entry level degree of U.S. trained physical therapists or physical therapist assistants as established by the American Physical Therapy Association.

5. An applicant for licensure as a physical therapist shall submit verification of having successfully completed a full-time 1000 hour traineeship (approximately six months) under the direct supervision of a physical therapist licensed under § 54.1-2946 of the Code of Virginia. The initial 500 hours must be in an acute care facility treating both in and out patients and 500 hours may be in another type of physical therapy facility which is on the list approved by the advisory board.

6. An applicant for licensure as a physical therapist assistant shall submit verification of having successfully completed a full-time 500 hour traineeship in an acute care facility under the direct supervision of a physical therapist licensed under § 54.1-2946 of the Code of Virginia treating both inpatients and outpatients in a facility which meets the requirements of subdivision 7 below.

7. The traineeship must be completed in Virginia:

a. At a JCAH accredited hospital or other facility approved by the advisory board; and

b. At a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists or physical therapist assistants in Virginia.

8. It will be the responsibility of the trainee to make the necessary arrangements for his training with the Director of Physical Therapy, or the director's designee at the facility selected by the trainee.

9. The physical therapist supervising the trainee shall submit a progress report to the chairman of the advisory board at the end of 500 hours of training. A final report will be submitted at the end of the second 500 hours. These reports will be submitted on forms supplied by the advisory board.

10. If the trainee's performance is unsatisfactory, during the training period, the supervising therapist will notify, in writing, the chairman of the advisory board.

11. If the traineeship is not successfully completed at the end of the six-month period, the advisory board shall determine if the traineeship will be continued for a period not to exceed six months.

12. The traineeship requirements of this part may be waived, at the discretion of the advisory board, if the applicant for licensure can verify, in writing, the successful completion of one year of clinical practice in the United States, its territories or the District of Columbia.

13. A foreign trained physical therapist or physical therapist assistant licensed in another state who has less than one year of clinical practice in the United States, its territories or the District of Columbia must comply with the traineeship requirement for licensure by endorsement.

PART III.
EXAMINATION.

§ 3.1. Conditions of examinations.

A. The licensure examinations for both physical therapists and physical therapist assistants shall be prepared and graded as prescribed and approved by the board.

B. The advisory board shall schedule and conduct the examinations at least once each fiscal year, the time and place to be determined by the advisory board.

C. The physical therapy examination shall be a one-part comprehensive examination approved by the board as prescribed in § 54.1-2947 of the Code of Virginia.

D. The physical therapy assistant examination shall be an examination approved by the board as prescribed in § 54.1-2948.

§ 3.2. Examination scores.

A. The minimum passing scores shall be:

1. For the physical therapy examination: the grade shall be established by the board.

2. For the physical therapist assistant examination: the grade shall be established by the board.

B. The scores shall be filed with the appropriate reporting service.

§ 3.3. Failure to pass.

An applicant who fails the examination after three attempts shall be required to satisfactorily complete a full time supervised traineeship approved by the chairman of the Advisory Board on Physical Therapy as prescribed in § 8.4, Traineeship, prior to being eligible for three additional attempts.

PART IV.
LICENSURE BY ENDORSEMENT.

§ 4.1. Endorsement.

A. A physical therapist or physical therapist assistant who has been licensed by another state or territory or the District of Columbia by examination equivalent to the Virginia examination at the time of licensure and who has met all other requirements of the board may, upon recommendation of the advisory board to the board, be licensed in Virginia by endorsement.

B. Any physical therapist or physical therapist assistant seeking *licensure by* endorsement or as described in § 7.2 B who has been inactive for a period of two years or more and who wishes to resume practice shall first successfully complete a traineeship *and other requirements specified below. The requirements are:*

1. For any physical therapist or physical therapist assistant who has had an inactive practice for a period of two to six years, a traineeship of a minimum of one month of full time practice.

2. For any physical therapist or physical therapist assistant who has had an inactive practice for a period of seven to 10 years, a traineeship of a minimum of two months full-time practice, taking and passing the current licensure examination approved by the board and payment of fees prescribed in § 9.1 of these regulations.

3. For any physical therapist or physical therapist assistant who has an inactive practice exceeding a period of 10 years, a traineeship of a minimum of three months of full-time practice, and taking and passing the current licensure examination approved by the board and payment of fees prescribed in § 9.1 of these regulations.

PART V.
PRACTICE OF PHYSICAL THERAPY.

§ 5.1. General requirements.

All services rendered by a physical therapist shall be performed only upon medical referral by and under the direction of a doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

§ 5.2. Individual responsibilities to patients and to referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery.

A. The physical therapists' responsibilities are to evaluate a patient, plan the treatment program and administer and document treatment within the limit of his professional knowledge, judgment, and skills.

B. A physical therapist shall maintain continuing communication with and shall report the results of periodic evaluation of patients to the referring practitioner.

§ 5.3. Supervisory responsibilities.

A. A physical therapist shall supervise no more than three physical therapist assistants at any one time per practice setting, but not to exceed a total of two practice settings.

B. A physical therapist shall be responsible for any action of persons performing physical therapy functions under the physical therapist's supervision or direction.

C. A physical therapist may not delegate physical therapy treatments to physical therapy aides except those activities that are available without prescription in the public domain to include but not limited to hot packs, ice packs, massage and bandaging.

D. Supervision of a physical therapy aide means that a licensed physical therapist or licensed physical therapist assistant must be within the facility to give direction and instruction when procedures or activities are performed. Such nonlicensed personnel shall not perform those patient care functions that require professional judgment or discretion.

E. For patients assigned to a physical therapist assistant, the physical therapist shall make on-site visits to such patients jointly with the assistant at the frequency prescribed in § 6.1 of these regulations.

F. The advisory board may at its discretion approve the utilization of more than three physical therapist assistants supervised by a single physical therapist in institutions under the supervision of the Department of Mental Health, Mental Retardation and Substance Abuse Services where the absence of physical therapy care would be detrimental to the welfare of the residents of the institution.

G. A physical therapist shall supervise no more than two trainees at any one time as established in § 2.4 and Part VIII of these regulations.

PART VI.
PRACTICE OF PHYSICAL THERAPIST ASSISTANTS.

§ 6.1. Scope of responsibility.

A. A physical therapist assistant is permitted to perform all physical therapy functions within his capabilities and training as directed by a physical therapist. The scope of such functions excludes initial evaluation of the patient, initiation of new treatments, and alteration of the plan of care of the patient.

B. Direction by the physical therapist shall be interpreted as follows:

1. The initial patient visit shall be made by the physical therapist for evaluation of the patient and establishment of a plan of care.

2. The physical therapist assistant's first visit to the patient shall be made jointly with the physical therapist.

3. The physical therapist shall provide on-site supervision according to the following schedules:

a. For inpatients in hospitals, not less than once a week.

b. For all other patients, one of 12 visits made to

the patient during a 30-day period, or once every 30 days, whichever comes first.

4. Failure to abide by this regulation due to absence of the physical therapist in case of illness, vacation, or professional meeting, for a period not to exceed five consecutive days, will not constitute violation of the foregoing provisions.

PART VII.
RENEWAL OF LICENSURE; UPDATE FOR QUALIFICATIONS.

§ 7.1. Biennial renewal of license.

Every physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially during his birth month in each even numbered year and pay to the board the renewal fee prescribed in § 9.1 of these regulations.

~~A.~~ A licensee whose license has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

~~B.~~ An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

§ 7.2. Updates on professional activities.

A. The board shall require from physical therapists and physical therapist assistants licensed or applying for licensure in Virginia reports concerning their professional activities as shall be necessary to implement the provisions of these regulations.

B. A minimum of 320 hours of practice shall be required for licensure renewal for each biennium.

C. Any physical therapist or physical therapist assistant who fails to meet the requirements of subsection B of this section shall be considered to have been inactive since the professional activity requirement was last satisfied and the license shall be deemed to have expired and become invalid.

PART VIII.
TRAINEESHIP REQUIREMENTS.

§ 8.1. Traineeship required for relicensure.

A. Any physical therapist or physical therapist assistant who has been inactive as described in § 7.1 for a period of two years or more and who wishes to resume practice shall first successfully complete a traineeship.

B. The period of traineeship to be served by such person shall be:

1. A minimum of one month full time for those inactive for a period of two to six years.

2. A minimum of two months full time for those inactive for a period of seven to 10 years. *The applicant shall take and pass the physical therapy licensure examination as established in § 8.2 of the regulations.*

3. A minimum of three months full time for those inactive for a period exceeding 10 years. *The applicant shall take and pass the physical therapy licensure examination as established in § 8.2 of the regulations.*

C. The physical therapist who serves as the supervisor of a trainee under this section shall certify to the advisory board upon completion of the traineeship that the trainee's knowledge and skills meet current standards of the practice of physical therapy.

D. Upon receipt of a petition from a person seeking relicensure and declaring hardship, the advisory board may, at its discretion, recommend to the board that the traineeship provision be waived.

§ 8.2. Additional requirement for physical therapist examination.

In addition to the traineeship required in § 8.1, any physical therapist seeking relicensure who has been inactive for seven years or more shall take and pass the examination approved by the board and pay a fee as prescribed in § 9.1. If a trainee fails the examination three times, the trainee must appear before the advisory board prior to additional attempts.

§ 8.3. Exemption for physical therapist assistant.

A physical therapist assistant seeking relicensure who has been inactive shall be exempt from reexamination requirements but not from traineeship requirements.

§ 8.4. Traineeship required for unlicensed graduate scheduled to sit for the board's licensure examination as required by regulation in § 2.1.

A. Upon approval of the chairman of the advisory board, an unlicensed graduate trainee may be employed under the direct supervision of a physical therapist while awaiting the results of the next licensure examination.

B. The traineeship shall terminate upon receipt by the candidate of the licensure examination results.

C. A person not taking the licensure examination within three years after graduation shall successfully complete a full-time three-month traineeship before taking the licensure examination.

PART IX.

FEES.

§ 9.1. The following fees have been established by the board:

1. The fee for physical therapist examination shall be $200.

2. The fee for the physical therapist assistant examination shall be $200.

3. The fee for licensure by endorsement for the physical therapist shall be $225.

4. The fee for licensure by endorsement for the physical therapist assistant shall be $225.

5. The fees for taking the physical therapy or physical therapist assistant examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of the $100 fee, reschedule for the next time such examination is given.

6. The fee for license renewal for a physical therapist assistant's license is $80 and shall be due in the licensee's birth month, in each even numbered year. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

7. The fee for license renewal for a physical therapy license is $125 and shall be due in the licensee's birth month, in each even numbered year. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be $25 for each renewal cycle.

8. The examination fee for reinstatement of an inactive license as prescribed in § 8.2 shall be 200.

9. Lapsed license. The fee for reinstatement of a physical therapist or a physical therapist assistant license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be $225 and must be submitted with an application for licensure reinstatement.

10. Upon written request from an applicant to withdraw his application for licensure a fee of $100 shall be retained by the Board of Medicine as a processing fee.

NOTICE: The forms used in administering the Regulations Governing the Practice of Physical Therapy 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Licensure by Endorsement to Practice as a Physical Therapist/Physical Therapist Assistant (DHP-30-059), Revised 2/23/93
Instructions for Licensure by Endorsement to Practice as a Physical Therapist/Physical Therapist Assistant - Foreign Graduates (DHP-30-059), Revised 2/23/93
Application for a License to Practice Physical Therapy
Quiz on the Code and Regulations, Revised 7/13/92
Physical Therapist Licensing, Physical Therapist Assistant Licensing: The Interstate Reporting Service of Professional Examination Service, Revised 6/90
Verification of Physical Therapy Practice (DHP-30-059), Revised 10/26/92
Verification of State Licensure (DHP-30-059), Revised 10/26/92
Licensure Registration

VA.R. Doc. No. R93-742; Filed July 21, 1993, 4:43 p.m.

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Title of Regulation: **VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.**

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

Public Hearing Date: September 14, 1993 - 9 a.m.
Written comments may be submitted until October 25, 1993.
(See Calendar of Events section for additional information)

Basis: Sections 54.1-2400, 54.1-2952, and 54.1-2952.1 of the Code of Virginia provide the statutory basis for promulgation of these amendments by the Board of Medicine.

Purpose: The proposed amendments are designed to ensure the public protection by establishing standards for licensure, examinations, and practice of physicians' assistants. The amendments are promulgated to comply with statutes enacted by the Virginia Legislature regarding prescriptive authority for physicians' assistants. The regulations establish protocols for the supervising physician and the physician's assistant regarding the assistant's prescriptive authority. Academic study requirements for physicians' assistants in pharmacology are included to ensure standard practice regarding prescribing, administering or dispensing drugs or devices.

The proposed amendments address: (i) requirements necessary for prescribing, administering or dispensing Schedule VI controlled substances and devices by a physician's assistant, and (ii) specifications for the prescribed curriculum of academic study required for prescriptive authority.

Substance: Proposed changes are as follows:

§ 1.1 establishes a definition for physician's assistant formulary as used in these regulations.

§ 1.2 establishes responsibility of the physician's assistant to the supervising physician(s) regarding prescriptive authority.

§ 2.2 D 4 establishes prescriptive authority requirements for physicians' assistants.

§ 2.2 D 4 a specifies written protocols for categories of drugs and devices to be approved between the supervising physician(s) and physicians' assistants within guidelines of the formulary.

§ 2.2 E corrects application fee reference due to additional regulations.

§ 2.3 A specifies academic study for a physician's assistant curriculum in a school or institution accredited by the Committee on Allied Health Education (CAHE), American Medical Association (AMA), and the American Academy of Physician's Assistant (AAPA).

§ 3.4 A 3 corrects renewal fee reference due to additional regulations.

§ 4.1 A 4 specifies the supervising physician to be responsible for all prescriptions issued by the physician's assistant.

§ 4.1 A 4 a specifies supervising physician to attest that the physician's assistant is competent to prescribe drugs and devices.

§ 4.1 A 4 b specifies the supervising physician to attest that the physician's assistant understands the indications, dosages and side effects of treatment.

§ 4.1 B 2 specifies drugs and devices to be prescribed by a physician's assistant as only those allowed in Parts V and VI of the regulations.

Part V establishes Approval for Prescriptive Authority for physicians' assistants.

§ 5.1 specifies authority for a physician's assistant to prescribe.

§ 5.1 A specifies oversight of the physician's assistant to prescribe certain controlled substances and devices in the Commonwealth to the Board of Medicine.

§ 5.1 B specifies board approval for a physician's assistant applying for prescriptive authority.

§ 5.2 specifies qualifications and requirements for physicians' assistants to prescribe.

§ 5.2 A 1 specifies a physician's assistant must hold a current, unrestricted license as a physician's assistant in the Commonwealth as a component to prescribe.

§ 5.2 A 2 specifies submission of an acceptable protocol as defined in § 2.2 D 2 to the board as a component to prescribe.

§ 5.2 A 3 specifies submission of evidence attesting to successful passing of the National Commission on Certification of Physician's Assistant (NCCPA) examination as a component to prescribe.

§ 5.2 A 4 specifies submission of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology as a component to prescribe.

Part VI establishes Practice Requirements for Prescriptions for physicians' assistants.

§ 6.1 establishes approved formulary of drugs for physicians' assistants to prescribe, administer or dispense.

§ 6.1 A 1 specifies Schedule VI drugs and devices as the formulary for physicians' assistants with exceptions.

§ 6.1 A 2 specifies Schedule I through V as outside the formulary for physicians' assistants.

§ 6.1 B specifies the physician's assistant may prescribe only the categories of drugs and devices included in the formulary. In addition, the supervising physician retains the authority to further restrict the physician's assistant prescriptive authority.

§ 6.1 C specifies that the physician's assistant shall dispense or administer controlled substances in good faith for medical or therapeutic purposes only and within the course of his professional practice.

§ 6.2 establishes protocol and scope thereof regarding prescriptive authority for physician's assistant.

§ 6.2 B establishes protocol submission guidelines for physician's assistant prescriptions.

§ 6.2 B 1 specifies protocol submission to be included with the initial application for prescribing authority.

§ 6.2 B 2 specifies changes to the protocol that necessitate a resubmission with each biennial renewal.

§ 6.3 establishes disclosure requirements for each prescription concerning the supervising physician and physician's assistant.

§ 6.3 B specifies that the physician's assistant must disclose to the patient that he is a licensed physician's

assistant and also the name, address, and telephone number of the supervising physician. Such information may appear on the prescription pad or in some other form.

Part VI and § 7.1 corrects additional regulations concerning fees.

Issues: Regulations are promulgated to respond to new statutes providing prescriptive authority to physicians' assistants.

A regulation is promulgated to respond to variations in national physician's assistant programs concerning the academic study of pharmacology. The regulation is promulgated to standardize pharmacotherapy training required for physicians' assistants prescriptive authority.

Regulations are promulgated to respond to the supervising physicians responsibility to supervise the physician's assistant who prescribes.

Regulations are promulgated to respond to specific drugs and devices to be prescribed by a physician's assistant.

Regulations are promulgated to respond to licensure, protocols between the supervising physician and physician's assistant, NCCPA examination, and pharmacotherapy training for physician's assistant to prescribe.

Regulations are promulgated to respond to practice requirements for physicians' assistants concerning prescriptive authority.

Estimated Impact:

A. Impact on the Agency:

1. The board projects a cost of $1,200 to print new forms, print regulations, and mail a copy to each supervising physician and physician's assistant. The cost includes staff time for preparation and mailing the documents.

2. The board projects a cost of $9,000 to enforce the prescriptive authority for the physician's assistant. The cost is based upon investigations as will be required, review by the staff, and to conduct hearings.

B. The funds to address all identified fiscal impacts of the Board of Medicine are derived fees paid by licensees, applicants for licensure and certification and examinations.

C. Number and types of regulated entities affected:

1. Prescriptive authority: 200 Physicians' assistants

2. Supervising physicians responsible for physician's assistant: 465 Medical Doctors (Doctors of Osteopathy and Podiatric Medicine may also be affected but specific amounts cannot be determined at this time)

D. Projected costs to regulated entities for compliance are:

1. The cost to the physician's assistant who does not meet training requirements for pharmacology would be moderate. It is estimated that additional training to the physician's assistant would be approximately $800 to $1,000. The number of affected physicians' assistants is 5 to 10 per year.

2. Advertising requirements will result in a range of costs from low to moderate depending on the number of supervising physicians per physician's assistant. For example, changing business cards may cost approximately $50 per licensee.

Summary:

The proposed amendments establish requirements for prescriptive authority for physicians' assistants pursuant to § 54.1-2952.1 of the Code of Virginia. The amendments set minimal requirements for pharmacology education and establish the examination requirement for prescriptive authority.

Amendments also set requirements for a written protocol and formulary of drugs and devices which may be prescribed. Requirements for disclosure to the patient and responsibilities of the supervising physician are established.

VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Assistant to a Doctor of Medicine, Osteopathy, or Podiatry," or *"Physician's Assistant,"* means an individual who is qualified as an auxiliary paramedical person by academic and clinical training and is functioning in a dependent-employee relationship with a doctor of medicine, osteopathy, or podiatry licensed by the board.

"Board" means the Virginia Board of Medicine.

"Committee" means the Advisory Committee on Physician's Assistants appointed by the president of the board to advise the board on matters relating to physician's assistants. The committee is composed of four members of the board, one supervising physician, and two physician's assistants.

"Formulary" means the listing of categories of drugs which may be prescribed by the physician's assistant

according to these regulations.

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Protocol" means a set of directions developed by the supervising physician that defines the supervisory relationship between the physician assistant and the physician and the circumstances under which the physician will see and evaluate the patient.

"Supervision" means:

1. *"Alternate supervising physician"* means a member of the same group or professional corporation or partnership of any licensee, any hospital or any commercial enterprise with the supervising physician. Such alternating supervising physician shall be a physician licensed in the Commonwealth of Virginia who has registered with the board and who has accepted responsibility for the supervision of the service that a physician's assistant renders.

2. *"Direct supervision"* means the physician is in the room in which a procedure is being performed.

3. *"General supervision"* means the supervising physician is easily available and can be physically present within one hour.

4. *"Personal supervision"* means the supervising physician is within the facility in which the physician's assistant is functioning.

5. *"Supervising physician"* means the supervising physician who makes application to the board for licensure of the assistant.

6. *"Substitute supervising physician"* means a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth of Virginia who has accepted responsibility for the supervision of the service that a physician's assistant renders in the absence of such assistant's supervising physician.

§ 1.2. Applicability.

These regulations apply to physician's assistants ~~only,~~ *and the supervising physicians* as defined in § 1.1.

§ 1.3. A separate board regulation, VR 465-01-01, entitled Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is incorporated by reference in these regulations.

PART II.
REQUIREMENTS FOR PRACTICE AS A PHYSICIAN'S ASSISTANT.

§ 2.1. Requirements, general.

A. No person shall practice as a physician's assistant in the Commonwealth of Virginia except as provided in these regulations.

B. All services rendered by a physician's assistant shall be performed only under the supervision of a doctor of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth of Virginia.

§ 2.2. Licensure: Entry requirements and application.

A. A license to practice as a physician's assistant shall be obtained from the board before such assistant begins to practice with a supervising doctor of medicine, osteopathy, or podiatry.

B. Entry requirements.

An applicant for licensure shall:

1. Possess the educational qualifications prescribed in § 2.3 of these regulations; and

2. Meet the requirements for examination prescribed in §§ 3.1 through 3.3 of these regulations.

C. Application for board approval of a physician's assistant shall be submitted to the board by the supervising physician under whom the assistant will work, and who will assume the responsibility for the assistant's performance. By submitting the application, the supervising physician attests to the general competence of the assistant. In a group or institutional practice setting, the supervising physician shall be the contact for the board regardless of whether the supervision has been delegated to an alternate or substitute supervising physician.

D. The application shall:

1. Be made on forms supplied by the board and completed in every detail.

2. Spell out the roles and functions of the assistant with a protocol acceptable to the board and any such protocols shall take into account such factors as the number of patients, the types of illness treated by the physician, the nature of the treatment, special procedures, and the nature of the physician availability in ensuring direct physician involvement

an early stage and regularly thereafter.

a. The board may require, at its discretion, in a supplement to the application, information regarding the level of supervision, "direct," "personal" or "general," with which the supervising physician plans to supervise the physician's assistant for selected tasks. The board may also require the supervising physician to document the assistant's competence in performing such tasks.

b. The supervising physician shall maintain records of all approved invasive procedures performed by the physician's assistant.

c. The supervising physician shall report to the board the number of invasive procedures performed by the physician's assistant and complications resulting from the procedures, on forms provided by the board.

d. Failure to maintain records of invasive procedures performed by the physician's assistant, or provide a report to the board, shall be considered unprofessional conduct.

3. Provide that if, for any reason, the assistant discontinues working in the employment and under the supervision of the licensed practitioner who submitted the application:

a. Such assistant and the employing practitioner shall so inform the board and the assistant's approval shall terminate.

b. A new application shall be submitted to the board and approved by the board in order for the assistant either to be reemployed by the same practitioner or to accept new employment with another supervising physician.

4. If the role of the assistant includes prescribing for Schedule VI drugs and devices, the written protocol shall include those categories of drugs and devices within the approved formulary as found in § 6.1 of these regulations and that are within the scope of practice and proficiency of the supervising physician.

E. The application fee prescribed in § ~~5.1~~ *§ 7.1* of these regulations shall be paid at the time the application is filed.

§ 2.3. Educational requirements.

An applicant for licensure shall:

1. Have successfully completed a prescribed curriculum of academic study *for physicians' assistants* in a school or institution accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association and accredited by the American Academy of Physician Assistants; and

2. Present documented evidence of eligibility for the NCCPA examination or completed licensure requirements.

PART III.
EXAMINATION.

§ 3.1. The proficiency examination of the NCCPA constitutes the board examination required of all applicants for licensure.

§ 3.2. Provisional registration.

An applicant who has met the requirements of the board at the time his initial application is submitted may be granted provisional registration by the board if he meets the provisions of § 54.1-2950 of the Code of Virginia and § 2.3 of these regulations. Such provisional licensure shall be subject to the following conditions:

1. The provisional licensure shall be valid until the applicant takes the next subsequent NCCPA examination and its results are reported, but this period of validity shall not exceed 30 days following the reporting of the examination scores.

2. An applicant who fails the examination may be granted individual consideration by the board and granted an extension of the provisional licensure upon evidence that he is eligible for admission to the next scheduled board examination.

§ 3.3. Examination.

A. Every applicant shall take the NCCPA examination at the time scheduled by the NCCPA.

B. An applicant who fails the examination three consecutive times shall surrender his license to practice until proof has been provided to the board that the standards of NCCPA have been met.

§ 3.4. Renewal of license.

A. Every licensed physician's assistant intending to continue to practice shall biennially renew the license in each odd numbered year in the licensee's birth month:

1. Register with the board for renewal of his license;

2. Present documented evidence of compliance with continuing medical education standards established by the NCCPA; and

3. Pay the renewal fee as prescribed in § ~~5.1 B~~ *subsection B of § 7.1* at the time of filing the license renewal.

B. Any physician's assistant who allows his NCCPA

certification to lapse shall be considered not licensed by the board. Any such assistant who proposes to resume his practice shall make a new application for licensure.

PART IV.
INDIVIDUAL RESPONSIBILITIES.

§ 4.1. Individual responsibilities.

A supervising physician and the physician's assistants working with him shall observe the following division of responsibilities in the care of patients:

A. The supervising physician shall:

1. See and evaluate any patient who presents the same complaint twice in a single episode of care and has failed to improve significantly. Such physician involvement shall occur not less frequently than every fourth visit for a continuing illness.

2. Review the record of services rendered the patient by the physician's assistant and sign such records within 24 hours after any such care was rendered by the assistant.

3. Be responsible for all invasive procedures. Under general supervision, a physician's assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.

All other invasive procedures not listed above must be performed under direct supervision unless, after directly supervising the performance of a specific invasive procedure three times or more, the supervising physician attests to the competence of the physician's assistant to perform the specific procedure without direct supervision by certifying to the board in writing the number of times the specific procedure has been performed and that the physician's assistant is competent to perform the specific procedure. After such certification has been accepted and approved by the board, the physician's assistant may perform the procedure under general supervision.

4. Be responsible for all prescriptions issued by the assistant. He shall:

a. Attest to the competence of the assistant to prescribe drugs and devices; and

b. Attest that the assistant understands the indications, dosages and side effects of such treatment.

B. The physician's assistant shall not render independent health care. Such assistant:

1. Shall perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician's assistants protocol. When a physician's assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician's assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate protocol for that alternate supervising physician is approved and on file with the board.

2. ~~Shall not sign prescriptions.~~ *Shall prescribe only those drugs and devices as allowed in Parts V and VI of these regulations.*

3. Shall, during the course of performing his duties, wear identification showing clearly that he is a physician's assistant.

C. If the assistant is to perform duties away from the supervising physician, such supervising physician shall obtain board approval in advance for any such arrangement and shall establish written policies to protect the patient.

D. If, due to illness, vacation, or unexpected absence, the supervising physician is unable to supervise personally the activities of his assistant, such supervising physician may temporarily delegate the responsibility to another doctor of medicine, osteopathy, or podiatry. The employing supervising physician so delegating his responsibility shall report such arrangement for coverage, with the reason therefor, to the board office in writing, subject to the following provisions:

1. For planned absence, such notification shall be received at the board office at least one month prior to the supervising physician's absence;

2. For sudden illness or other unexpected absence, the board office shall be notified as promptly as possible, but in no event later than one week;

3. Temporary coverage may not exceed four weeks unless special permission is granted by the board.

E. With respect to assistants employed by institutions, the following additional regulations shall apply:

1. No assistant may render care to a patient unless the physician responsible for that patient has signed an application to act as supervising physician for that assistant. The board shall make available appropriate forms for physicians to join the application for an assistant employed by an institution.

2. Any such application as described in subdivision 1 above shall delineate the duties which said physician authorizes the assistant to perform.

3. The assistant shall as soon as circumstances may dictate but, within an hour, with an acute or significant finding or change in clinical status, report to the supervising physician concerning the examination of the patient. The assistant shall also record his findings in appropriate institutional records.

4. No physician assistant shall perform the initial evaluation, or institute treatment of a patient who presents to the emergency room or is admitted to the hospital for a life threatening illness or injury. In noncritical care areas, the physician assistant may perform the initial evaluation in an inpatient setting provided the supervising physician evaluates the patient within eight hours of the physician assistant's initial evaluation.

PART V.
APPROVAL FOR PRESCRIPTIVE AUTHORITY.

§ 5.1. Authority to prescribe; general.

A. The licensed physician's assistant shall have the authority to prescribe certain controlled substances and devices in the Commonwealth of Virginia in accordance with these regulations and as authorized by the Board of Medicine.

B. The board shall approve prescriptive authority for applicants who meet the qualifications set forth in § 5.2 of these regulations.

§ 5.2. Qualifications for approval of prescriptive authority.

A. An applicant for prescriptive authority shall meet the following requirements:

1. Hold a current, unrestricted license as a physician's assistant in the Commonwealth of Virginia;

2. Submit a protocol acceptable to the board as defined in § 2.2 D 2. This protocol must be approved by the board prior to issuance of prescriptive authority;

3. Submit evidence of successful passing of the NCCPA exam; and

4. Submit evidence of successful completion of a minimum of 35 hours of acceptable training to the board in pharmacology.

PART VI.
PRACTICE REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY.

§ 6.1. Approved formulary.

A. The approved formulary of drugs which the physician's assistant with prescriptive authority may prescribe, administer, or dispense shall include:

1. Schedule VI drugs and devices with exception of the following:

Radioactive drugs

Ophthalmic aminoglycosides

Ophthalmic steroids

Any compound containing barbiturates

2. No controlled substances defined by the state and federal Controlled Substances Acts as Schedule I through V.

B. The physician's assistant may prescribe only those categories of drugs and devices included in the approved formulary and in the practice agreement as submitted for authorization. The supervising physician retains the authority to restrict certain drugs within these approved categories.

C. The physician's assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

§ 6.2. Protocol regarding prescriptive authority.

A. A physician's assistant with prescriptive authority may prescribe only within the scope of the written protocol as specified in § 2.2 D 2.

B. A new protocol must be submitted with the:

1. Initial application for prescriptive authority.

2. Application for each biennial renewal, if there have been any changes in supervision, authorization or scope of practice.

§ 6.3. Disclosure.

A. Each prescription shall bear the name of the supervising physician and of the physician's assistant.

B. The physician's assistant shall disclose to the patient that he is a licensed physician's assistant, and also the name, address and telephone number of the supervising physician. Such disclosure may be included on the prescription pad or may be given in writing to the patient.

PART ~~V.~~ *VII.*
FEES.

~~§ 5.1.~~ *§ 7.1.* The following fees are required:

A. The application fee, payable at the time application is filed, shall be $100.

B. The biennial fee for renewal of license shall be $80 payable in each odd numbered year in the birth month of the licensee.

C. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be $10 for each renewal cycle.

NOTICE: The forms used in administering the Regulations Governing the Practice of Physicians' Assistants 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 Board of Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing Physician Assistant Application

Application for Certification as a Physician's Assistant (DHP-30-056), Revised 8/91

Protocol of Physician's Assistant's Duties

Physician's Assistant Invasive Procedures Protocol

Employment Form (HRB-30-056 B)

State Questionnaire (HRB-30-056 C), Revised 7/83

Licensure Registration

VA.R. Doc. No. R93-743; Filed July 21, 1993, 4:40 p.m.

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Title of Regulations: **VR 465-08-1. Regulations for Certification of Occupational Therapists.**

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

Public Hearing Date: N/A – Written comments may be submitted until October 25, 1993.
(See Calendar of Events section for additional information)

Basis: Section 54.1-2400 of the Code of Virginia provides the statutory basis for promulgation of these amendments by the Board of Medicine.

Purpose: The proposed amendments are designed to ensure the public protection by establishing standards for certification, examinations, and practice of occupational therapy. Specific criteria for foreign educated applicants seeking certification has been included in the regulations to ensure a more standard practice provided to the citizens of the Commonwealth.

The proposed amendments address (i) English proficiency, and (ii) redundant entry requirements. In addition, changes are made to correct inappropriate grammar.

Substance: Proposed changes (i) correct inappropriate grammar when specifying "Occupational Therapy Personnel" and establish a definition for the Test of English as a Foreign Language (TOEFL); (ii) clarify requirements for certification when training in the United States was not completed in an American Medical Association (AMA) or American Occupational Therapy Association (AOTA) accredited program; (iii) establish and specify requirements for minimum competency of the English language when educational training is outside of the United States; (iv) clarify requirements for certification when training is outside of the United States and does not meet the requirements of § 2.2 C; (v) specify requirements for submitting evidence from the AOTCB to the board for certification to practice as an occupational therapist; (vi) delete § 2.2 B due to specification in § 2.3 A; and (vii) correct inappropriate grammar concerning certification and examination for certification to practice occupational therapy.

Issues: A regulation is promulgated to define the Test of English as a Foreign Language (TOEFL). Section 1.1 addresses this issue. A regulation is promulgated to respond to possible deficiencies of English minimum competency by foreign educated occupational therapists and to ensure adequate communication by such therapists to the citizens of the Commonwealth. Section 2.2 C addresses these issues. A regulation is promulgated to respond to certification by the AOTCB as an alternative criteria for foreign educated occupational therapists to sit for the Virginia certification examination. Section 2.2 D addresses this issue. A regulation is promulgated to respond to redundant regulations concerning certification by the AOTCB. Section 2.3 A addresses this issue.

Estimated Impact: A minimal cost to staff time will occur to verify the TOEFL examination and AOTCB certification for occupational therapy applications. These costs can be absorbed within current revenues. The Board of Medicine funds are derived from fees paid by licensees, applicants for licensure and certification, and examinations. Forty-five occupational therapist applicants (foreign educated applicants) a year will be affected. Increased costs to regulated entities for compliance are limited to TOEFL exam costs ($35 per applicant for examination and $10 for submission costs to the Board of Medicine paid to TOEFL): TOTAL: $45 one time per applicant.

Summary:

The proposed amendments establish requirements governing the practice of Occupational Therapy. They include requirements for English proficiency and the reduction of redundant entry requirements for certification as an occupational therapist. These regulations are promulgated to assure safe delivery of occupational therapy to the citizens of the Commonwealth.

The proposed amendments respond to continuing review of the regulations by the board and staff concerning: specification of requirements concerning English as a foreign language, and specification of certification requirements as suggested by the American Occupational Therapy Certification Board and Board of Medicine.

VR 465-08-01. Regulations for Certification of Occupational Therapists.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Advisory board" means the Advisory Board of Occupational Therapy.

"AOTA" means the American Occupational Therapy Association, Inc.

"AOTCB" means the American Occupational Therapy Certification Board, Inc., under which the national examination for certification is developed and implemented.

"AMA" means the American Medical Association.

"Board" means the Virginia Board of Medicine.

"Certification examination" means the national examination approved and prescribed by AOTCB for certification as an occupational therapist.

"Occupational therapist" means a person who is qualified by education and training to administer an occupational therapy program current and valid certification by the board.

"Occupational therapy personnel" means ~~a person~~ *persons* who ~~provides~~ *provide* occupational therapy services under the supervision of a certified occupational therapist.

"TOEFL" means the Test of English as a Foreign Language.

"World Federation of Occupational Therapists" means the association of member nations outside of the United States, its possessions or territories whose academic and clinical fieldwork requirements are in accordance with the American Occupational Therapy Association Essentials of an accredited educational program for an occupational therapist.

§ 1.2. A separate regulation, VR 465-01-01, Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine, is incorporated by reference in these regulations.

PART II.
REQUIREMENTS OF CERTIFICATION AS AN OCCUPATIONAL THERAPIST.

§ 2.1. Requirements, general.

A. No person shall practice as an occupational therapist in the Commonwealth of Virginia except as provided in these regulations.

B. Certification by the board to practice as an occupational therapist shall be by examination as prescribed in these regulations.

§ 2.2. Educational requirements.

A. An applicant for certification who has received his professional education in the United States, its possessions or territories, must successfully complete all academic and fieldwork requirements of an AMA/AOTA accredited educational program as verified by the candidate's program director.

B. An applicant who does not meet the educational requirements as prescribed in subsection A of this section but who holds certification by the AOTCB as an occupational therapist shall provide verification of his education, training and work experience acceptable to the board.

~~B.~~ *C.* An applicant who has received his professional education outside the United States, its possessions or territories, must successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and approved by the AOTCB *and submit proof of proficiency in the English language by passing with a grade of not less than 560, the Test of English as a Foreign Language (TOEFL); or an equivalent examination approved by the board. TOEFL may be waived upon evidence of English proficiency .*

~~C. An applicant who does not meet the educational requirements as prescribed in subsection B of this section but who holds certification by the AOTCB as an occupational therapist shall provide verification of his education, training and work experience acceptable to the board.~~

D. An applicant who does not meet the educational requirements as prescribed in subsection C of this section but who holds certification by the AOTCB as an occupational therapist shall be eligible for certification in Virginia.

§ 2.3. Certification by examination.

A. An applicant for certification to practice as an occupational therapist must submit *evidence* to the board ~~a score report from the certification examination indicating a minimum passing score as established and verified by the AOTCB~~ *that he holds current and valid certification from the AOTCB* .

~~B. Persons who hold current and valid certification from the AOTCB may submit with their application to the board verification of that AOTCB Certification in lieu of the score report of the certification examination as required in § 2.3 A of these regulations.~~

~~C.~~ *B.* An applicant must submit the application, credentials and prescribed fees as required by the board for certification.

~~D.~~ *C.* An applicant who has graduated from a duly accredited educational program in occupational therapy shall be allowed to practice as an occupational therapist for one year from the date of graduation or until he has taken and received a passing grade of the certification examination, whichever occurs sooner.

~~E.~~ *D.* An applicant who fails to successfully pass the examination within one year after graduation may practice occupational therapy under the supervision of a certified occupational therapist until successful completion of the certification examination and the filing of the required application, credentials, and fee.

~~F.~~ *E.* An applicant who does not qualify by education for the AOTCB Certification Examination and who does not hold *a* valid ~~certification~~ *certificate* from the AOTCB but who is currently practicing occupational therapy may submit , for review and recommendation of the advisory board and the approval by the board , evidence of his education, training, and experience along with a request to take the ~~certification~~ examination for certification as an occupational therapist in Virginia. A person who does not take the certification examination may continue to practice occupational therapy under the supervision of an occupational therapist.

§ 2.4. Practice requirements.

An applicant who has met education and examination requirements but who has not practiced occupational therapy for a period of six years shall serve a board approved supervised practice of 160 hours which is to be completed in two consecutive months.

PART III.
RENEWAL OF CERTIFICATION: REINSTATEMENT.

§ 3.1. Biennial renewal of certification.

A. An occupational therapist shall renew his certification biennially during his birth month in each even numbered year by:

1. Paying to the board the renewal fee prescribed in § 5.1 of these regulations; and

2. Indicating whether or not he has been professionally active during each biennial renewal cycle.

B. An occupational therapist whose certification has not been renewed by the first day of the month following the month in which renewal is required shall be dropped from the certification roll.

C. An additional fee to cover administrative costs for processing a late application shall be imposed by the board as prescribed in § 5.1.

§ 3.2. Reinstatement.

A. An occupational therapist who allows his certification to lapse for a period of two years or more and chooses to resume his practice shall make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in § 5.1 B of these regulations.

B. An occupational therapist who has allowed his certification to lapse for six years or more, must serve a board approved, supervised practice of 160 hours to be completed in two consecutive months.

C. An occupational therapist whose certification has been revoked by the board and who wishes to be reinstated must make a new application to the board and payment of the fee for reinstatement of his certification as prescribed in § 5.1 F of these regulations.

PART IV.
PRACTICE OF OCCUPATIONAL THERAPY.

§ 4.1. General responsibilities.

An occupational therapist renders his services of assessment, program planning, and therapeutic treatment upon request for such service.

§ 4.2. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying the goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health,

community or educational services, the family and the patient. The services may include but are not limited to education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for the handicapped.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

§ 4.3. Supervisory responsibilities.

A. An occupational therapist shall be responsible for supervision of occupational therapy personnel who work under his direction.

B. The supervising occupational therapist shall meet with the occupational therapy personnel to review and evaluate treatment and progress of the individual patients at least once every fifth treatment session or 21 calendar days, whichever occurs first.

C. An occupational therapist shall not supervise more than six occupational therapy personnel.

D. An occupational therapist shall be responsible for any action of persons providing occupational therapy under his supervision.

PART V.
FEES.

§ 5.1. The following fees have been established by the board:

1. The initial fee for the occupational therapist certification shall be $150.

2. The fee for reinstatement of the occupational therapist certification shall be $150.

3. The fee for certification renewal shall be $85 and shall be due in the birth month of the certified therapist in each even numbered year.

4. The additional fee to cover administrative costs for processing a late application shall be $25 for each renewal cycle.

5. The fee for a letter of good standing/verification to another state for a license or certification shall be $10.

6. The fee for reinstatement of revoked certification shall be $500.

NOTICE: The forms used in administering the Regulations for Certification of Occupational Therapists 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 Board of Medicine, 6606 West Broad Street, Richmond, Virginia, 23230, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing an Application for Certification as an Occupational Therapist

Application for Certification to Practice Occupational Therapy (DHP-030-080, rev. 1/93)

VA.R. Doc. No. R93-744; Filed July 21, 1993, 4:41 p.m.

BOARD OF PSYCHOLOGY

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

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

Public Hearing Date: September 14, 1993 - 9:30 a.m.
Written comments may be submitted through October 25, 1993.
(See Calendar of Events section for additional information.)

Basis: Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia authorizes the Board of Psychology to license psychologists and school psychologists and to recommend clinical psychologists for licensure under the Board of Medicine after investigation and successful examination by the Board of Psychology. Section 54.1-113 of the Code of Virginia requires the Board of Psychology to adjust fees when revenue is greater than or less than 10% of the board's operating budget. With current fees the board expects a shortfall of $66,087 as of June 30, 1994.

Purpose: The purpose of the proposed regulations is to adjust revenues to meet but not exceed expenses as required by Virginia law. The regulations also set examination costs to the candidate for the state and national examination selected by the board during the competitive bid process. Additionally the proposed regulation specifies the time period for a residency which was inadvertently omitted in the current regulations.

Substance: Section 1.3 increases fees to be required by the board:

Application processing for clinical psychologists – $450 (now $350).

Increase examination fees required by the board:

The fee for the nationally normed standardized examination effective July 1, 1993, is currently $275. The proposed fee is $325.

The fee for the state written examination is currently $150. The proposed fee is $225.

The fee for the combined national and state written examinations is currently $425. The proposed fee is $490.

Annual renewal of license for psychologists – $95 (now $150 per biennium).

Annual renewal of license for school psychologists – $95 (now $150 per biennium).

Section 2.2 A 2 b (2) sets a minimum time limit of one full calendar year for the residency requirement. This is a nationally recognized standard requirement for training.

Issues: The board is unaware of any controversy surrounding the proposed fee increases. The proposed regulations are currently in effect as emergency provisions. During the time these emergency provisions are in effect the board will collect any comments received. These comments, coupled with any received during the public comment period, will permit the board to assess any issues and make adjustments to final regulations if appropriate.

Cost of Implementation: The proposed fee increases will not create an additional cost burden on the board, but will instead adjust fees and income as required by law. Examination fees will be an increased cost to the candidate but will be paid directly to the examination service and will assure that the board's state examination is appropriate and developed accordingly.

Number and Type of Regulated Entities Affected:

– 65 licensed school psychologists each year

– 565 licensed psychologists each year

– 100 clinical psychologists each year

Projected Cost of Compliance: The increase in application fees for clinical psychologists will cost the applicant an additional $100 above the current cost of $350.

The licensure renewal fee will costs the psychologist and school psychologist an additional $20 per year to maintain a license.

The renewal fee for psychologists is currently $150 per biennium. The proposed fee is $95 per year.

The renewal fee for school psychologists is currently $150 per biennium. The proposed fee is $95 per year.

The application fee for clinical psychologists is currently $350. The proposed fee is $450.

The increase in examination fees reflects the increased cost by the sole source national EPPP examination and the new state written examination. The increase will cost the candidate an additional amount as follows:

The fee for the nationally normed standardized examination effective July 1, 1993, is currently $275. The proposed fee is $325.

The fee for the state written examination is currently $150. The proposed fee is $225.

The fee for the combined national and state written examinations is currently $425. The proposed fee is $490.

The one year residency requirement has not been changed from current board policy and past regulations; therefore, will be of no increased burden to the applicant.

Summary:

The proposed regulations will replace emergency regulations made effective on March 16, 1993, which increase licensure renewal fees for psychologists and school psychologists. The proposed regulations also increase the application fees for the clinical psychology license. These increased fees are necessary according to § 54.1-113 of the Code of Virginia which requires that the board adjust its fees so that revenues are within 10% (plus or minus) of the cost of board operations.

The proposed regulations also amend examination fees to reflect the direct cost to the candidate for the examination services.

Additionally, these regulations set a time limit of one full calendar year for the required residency requirement for psychology (clinical) trainees. This requirement was previously set out in regulation but was inadvertently omitted from the Regulations Governing the Practice of Psychology effective January 27, 1993.

VR 565-01-2. Regulations Governing the Practice of Psychology.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Applicant" means a person who submits a complete application for licensure with the appropriate fees.

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Clinical psychologist" means a psychologist who is competent in the diagnosis, prevention, treatment, and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice of medicine. The definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which they are licensed to provide.

"Practice of clinical psychology" means the offering by an individual of services to the public as a clinical psychologist.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means a supervised and planned practical experience obtained in an integrated training program in a setting included as an integral and required part of the applicant's program of study.

"Nonclinical services" means such psychological services as consultation and evaluation for agencies, industry and other professionals, and shall not mean the assessment, diagnosis, or treatment of behavioral, emotional or nervous disorders.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Psychologist" means a person trained in the application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment.

"Practice of psychology" means the rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods, or procedures of the science and profession of psychology, and which includes, but is not limited to:

1. *"Measuring and testing,"* which consists of the psychological assessment and evaluation of abilities, attitudes, aptitudes, achievements, adjustments, motives, personality dynamics or other psychological attributes of individuals, or groups of individuals, by means of standardized measurements or other methods, techniques or procedures recognized by the science and profession of psychology.

2. *"Counseling and psychotherapy,"* which consists of the application of principles of learning and motivation in an interpersonal situation with the objectives of modification of perception and adjustment, consisting of highly developed skills, techniques, and methods of altering through learning processes, attitudes, feelings, values, self-concept, personal goals and adaptive patterns.

3. *"Psychological consulting,"* which consists of interpreting or reporting upon scientific fact or theory in psychology, rendering expert psychological opinion, psychological evaluation, or engaging in applied psychological research.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"School psychologist" means a person who specializes in problems manifested in and associated with educational systems and who utilizes psychological concepts and methods in programs or actions which attempt to improve learning conditions for students or who is employed in this capacity by a public or nonprofit educational institution or who offers to render such services to the public whether or not employed by such an institution.

"Practice of school psychology" means the rendering or offering to render to individuals, groups, organizations, government agencies or the public any of the following services:

1. *"Testing and measuring"* which consists of psychological assessment, evaluation, and diagnosis relative to the assessment of intellectual ability, aptitudes, achievement, adjustment, motivation, personality, or any other psychological attribute of persons as individuals or in groups that directly relates to learning or behavioral problems in an educational setting.

2. *"Counseling"* which consists of professional advisement and interpretive services with children or adults for amelioration or prevention of educationally related problems.

Counseling services relative to the practice of school psychology include, but are not limited to, the procedures of verbal interaction, interviewing, behavior modification, environmental manipulation, and group processes.

Counseling services relative to the practice of school psychology are short term and are situation oriented.

3. *"Consultation"* which consists of educational or vocational consultation or direct educational services to schools, agencies, organizations, or individuals.

Consultation as herein defined is directly related to learning problems and related adjustments.

4. Development of programs such as designing more efficient and psychologically sound classroom situations and acting as a catalyst for teacher involvement in adaptations and innovations

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

§ 1.2. Classification of licensees.

In compliance with Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia, the board classifies licensees as psychologists, school psychologists, or clinical psychologists.

A. Psychologist.

This license covers the practice of psychology, as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia which is divided into two designated specialties requiring different sets of skills and knowledge: (i) for providers of clinical services and (ii) for providers of nonclinical services. The psychologist license is designated accordingly as either psychologist (clinical) or psychologist (nonclinical). The licensee's scope of practice is delimited by the designation of the license and further by licensee's demonstrable areas of competence.

B. Clinical psychologist.

This license pertains only to the practice of clinical psychology as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia. The candidate for this license, after further investigation and examination by the board, is recommended to the Virginia Board of Medicine for licensure and subsequent regulation .

C. School psychologist.

This license pertains only to the practice of school psychology as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

§ 1.3. Fees required by the board.

A. The board has established fees for the following:

1. Registration of residency (per residency request) $100

2. Application processing for:

(a) Graduates of American institutions for licensure as:

(1) Psychologist (clinical or nonclinical) $150

(2) School psychologist $150

(3) Clinical psychologist ..... ~~$350~~ *$450*

(b) Graduates of foreign institutions (in addition to application processing fee) $150

3. Examinations:

(a) Nationally normed standardized examination ..... ~~$160~~ *$325*
~~Effective July 1, 1993~~ ..... ~~$275~~

(b) State written examination ..... ~~$150~~ *$225*

(c) National and state written examinations $490

4. Initial license
.....pro-rated portion of
..... ~~$150 biennial~~ *$95 annual*
.....renewal fee

5. ~~Biennial~~ *Annual* renewal of license ..... ~~$150~~ *$95*

6. Late renewal $10

7. Endorsement to another jurisdiction $10

8. Additional or replacement wall certificate $15

9. Returned check $15

10. Rereview fee $25

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

PART II.
REQUIREMENTS FOR LICENSURE.

§ 2.1. Requirements, general.

A. No person shall practice psychology or school psychology in the Commonwealth of Virginia except as provided in the Code of Virginia and these regulations.

B. No person shall practice clinical psychology in the Commonwealth of Virginia except when licensed by the Virginia State Board of Medicine upon recommendation by the Board of Psychology.

C. Licensure of all applicants under subsections A and B of this section shall be by examination by this board.

D. Every applicant for examination by the board shall:

1. Meet the education and experience requirements prescribed in § 2.2 or § 2.3 of these regulations, whichever is applicable for the particular license sought; and

2. Submit to the executive director of the board, not less than 90 days prior to the date of the written examination:

a. A completed application, on forms provided by the board;

b. Documentation of having fulfilled the experience requirements of § 2.2 or § 2.3 where applicable; and

c. The application processing fee prescribed by the board; and

3. Have the institution that awarded the graduate degree(s) submit directly to the executive director of the board, at least 90 days prior to the date of the written examination, official transcripts documenting:

a. The graduate work completed; and

b. The degree(s) awarded.

§ 2.2. Education and experience requirements: Graduates of American institutions.

A graduate of an American higher education institution who applies for examination for licensure shall meet the requirements of subsection A, B, or C of this section, whichever is applicable:

A. Psychologists.

1. Psychologist (nonclinical).

a. Program of study. The applicant shall hold a doctorate in psychology from an institution accredited by a regional accrediting agency. Further, the applicant's program must conform to the following criteria for doctoral programs in psychology.

(1) The program, wherever it may be administratively housed, shall be clearly identified and labeled as a psychology program. Such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(2) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(3) There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

(4) The program must be an integrated, organized sequence of study.

(5) There shall be an identifiable psychology faculty and a psychologist responsible for the program.

(6) The program shall have an identifiable body of students who are matriculated in that program for a degree.

b. Education. The applicant's program shall have included at least one three semester-credit hour course in each of the following areas of study:

(1) Statistics and research design;

(2) Physiological psychology or sensation and perception;

(3) Learning/cognition;

(4) Social psychology;

(5) Study of the individual;

(6) History and systems; and

(7) Scientific and professional ethics and standards.

c. Experience. No supervised experience is required for licensure as a psychologist (nonclinical).

2. Psychologist (clinical).

a. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which:

(1) Was accredited by the American Psychological Association (APA) prior to the applicant's graduation from the program; or

(2) Was accredited by the APA within four years after the applicant graduated from the program; or

(3) If not APA accredited, was a program which met the criteria outlined in § 2.2 A 1 a. Further, the program must have required successful completion by the applicant of all the following:

(a) At least one three-semester-credit hour course in each of the areas of study prescribed in subdivision A 1 b of this section for a psychologist (nonclinical).

(b) At least one three-semester-credit hour course in each of the following additional areas of study:

(i) Personality theory;

(ii) Diagnostic interviewing and behavioral assessment;

(iii) Psychometric, psychodiagnostic, and projective testing;

(iv) Psychopathology;

(v) Psychotherapy, both individual and group; and

(vi) Practicum: Supervision and assessment/diagnosis and psychotherapy; and

(c) A one-year, full-time internship approved by the American Psychological Association (APA) or consistent with the requirements for APA approval and approved by the applicant's doctoral program.

b. Experience. Applicants shall possess post-doctoral experience as defined in this subparagraph and shall inform the board, when they apply, how they propose to meet this experience requirement. This requirement may be met in one of two ways:

(1) By waiver based on lengthy experience. Applicants possessing many years of relevant post-doctoral experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision A 2 b (2) described below; or

(2) Residency requirements. The applicant under this provision shall show documentation of ~~a previous residency or request approval to begin a current residency with the following conditions:~~ *the successful completion of a one-year, full-time post-doctoral residency, or its equivalent in part-time experience for a period not to exceed three years, consisting of supervised experience in the delivery of clinical services acceptable to the board; or the applicant may request approval to begin a residency with the following conditions:*

a. Applicants shall apply for licensure and residency concurrently.

b. Prior to initiating the proposed residency training, the applicant shall:

(1) Register with the board;

(2) Pay the registration fee;

(3) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and

(4) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training, cannot be guaranteed the residency will be approved.)

c. Supervision shall be provided by a licensed psychologist, clinical psychologist, or school psychologist.

d. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

e. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

f. Residents may not call themselves psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology."

g. At the end of the residency training period, the supervisor(s) shall submit to the board, a written evaluation of the applicant's performance.

~~h. The applicant shall not continue in residency status for more than three years.~~

B. Clinical psychologist.

The applicant for examination for licensure as a clinical psychologist shall possess the same educational qualifications and shall have met the same experience requirements as those prescribed for a psychologist (clinical) in subdivisions A 2 a and A 2 b respectively of this section.

C. School psychologist.

1. Education. The applicant shall hold at least a master's degree in school psychology, with a minimum of at least 60 semester credit hours, from a college or

university accredited by a regional accrediting agency. The program requirements shall:

a. Reflect a planned, integrated, and supervised program of graduate study as outlined for programs approved by the American Psychological Association (APA) or by the National Council for the Accreditation of Teacher Education (NCATE); and

b. Include an internship approved by the applicant's training program.

2. Experience. Applicants shall possess post-master's degree experience as defined in this section and shall inform the board when they apply as to how they propose to meet this experience requirement. This requirement may be met in one of two ways:

a. By waiver based on lengthy experience. Applicants possessing many years of relevant post-master's degree experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision C 2 b described below:

b. By residency. The applicant shall show documentation of a previous full-time residency of at least one school year, or the equivalent in part-time experience or request approval to begin a current residency with the following conditions:

(1) Applicants shall apply for licensure and residency concurrently.

(2) Prior to the proposed residency training, the applicant shall:

(a) Register with the board;

(b) Pay the registration fee;

(c) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and

(d) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training, cannot be guaranteed the residency will be approved).

c. Supervision shall be provided by a licensed school psychologist, licensed psychologist, or licensed clinical psychologist.

d. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

e. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

f. Residents may not call themselves psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in School Psychology."

g. At the end of the residency training period, the supervisor(s) shall submit to the board a written evaluation of the applicant's performance.

h. The applicant shall not continue in residency status for more than three years.

D. Applicants for additional licenses.

To obtain additional licenses, all requirements shall be met as prescribed by the board. Applicants shall complete a new application and submit new application fees. A complete new application process may be initiated at the board's discretion.

§ 2.3. Graduates of foreign institutions.

A graduate of a foreign higher education institution who applies for examination for licensure as a psychologist or clinical psychologist shall:

1. Hold a doctorate in psychology;

2. Present documentation that the degree is from a planned, integrated, and supervised program of graduate study that meets requirements judged by the board to be equivalent with the requirements for approval by the American Psychological Association (APA) or equivalent with those requirements prescribed by the board and met by approved domestic institutions;

3. Meet the course and practicum requirements outlined in § 2.2; and

4. Pay the application processing fee prescribed in § 1.3 for graduates of foreign institutions.

§ 2.4. Out-of-state applicants with lengthy experience.

An applicant who is licensed in another state may

practice in Virginia in accordance with the provisions of this section.

A. Until such time as the applicant receives a Virginia license, the applicant may practice only under the supervision of a Virginia licensee.

B. The supervised practice of the applicant shall be performed in accordance with all of the provisions prescribed in these regulations for a residency. After a Virginia license is granted, the applicant may terminate residency status and begin independent practice.

C. The applicant shall take the examination(s) deemed appropriate by the board within one year of board approval of application.

D. The applicant may not practice independently until the Virginia license is granted.

PART III.
EXAMINATIONS.

§ 3.1. General examination requirements.

A. In order to be licensed, each candidate shall take and pass the examination(s) determined by the board to be required according to the candidate's individual qualifications under the general provisions of this section. The complete examination process consists of two components.

1. A nationally normed standardized examination in the practice of psychology;

2. The Board of Psychology written examination(s).

B. An applicant enrolled in an approved residency training program required in § 2.2 who has met all requirements for licensure except completion of that program shall be eligible to take both the national and state written examinations.

C. Waivers; modifications.

1. Diplomate applicant. The board may waive the written examination(s) , except for the state jurisprudence examination, for an applicant who has been awarded a diploma by the American Board of Professional Psychology in either clinical, counseling, or school psychology.

2. Endorsement. The board may waive only the national written examination for an applicant licensed or certified in another jurisdiction by standards and procedures equivalent to those of the board and meeting the educational requirements set forth in these regulations. The state written examination(s) cannot be waived.

D. Notice.

1. At least 30 days prior to the date of examinations, the executive director will notify all candidates in writing of the time and place of examinations.

2. The candidate shall then submit the applicable fees.

3. If the candidate fails to appear for the examination without providing written notice at least two week before the examination, the examination fee shall be forfeited.

E. Deferrals by candidate: time limit.

A candidate licensed in another jurisdiction shall follow the requirements in § 2.2.

A candidate approved by the board to sit for an examination and who has never been licensed in any jurisdiction shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed:

1. The initial board approval to sit for the examination shall then become invalid; and

2. In order to be considered for the examination later, the applicant shall file a complete new application with the board and pay the applicable fee.

§ 3.2. Written examinations.

A. The nationally normed standardized examination in the practice of psychology.

1. This examination shall consist of multiple-choice questions that sample a broad range of psychology content areas.

2. A passing grade shall be a score that is determined by the board for all doctoral-level examinees.

B. The Board of Psychology written examination.

1. These examination(s) may consist of essay or multiple choice questions or both related to:

a. The practice of psychology; and

b. Virginia laws and board regulations governing the practice of psychology.

2. A passing score shall be determined by the board.

§ ~~3.4.~~ *3.3.* Reexamination.

Reexamination of candidates will be required only on the examinations failed.

A. After paying the reexamination fee, a candidate may be reexamined once within a 12-month period after the

failed examinations without filing a formal reapplication and without presenting evidence of additional education or experience.

B. A candidate who fails any examination twice shall wait at least one year between the second failure and the next reexamination. Such candidate shall submit to the board:

1. An updated application;

2. Documentation of additional education or experience gained since the last failure; and

3. New application and examination fee(s) as prescribed by the board.

PART IV.
LICENSURE.

§ 4.1. Licensure.

A. Upon payment of the prorated portion of the biennial licensure fee prescribed by the board, the board will issue to each successful candidate a license to practice as a psychologist or school psychologist.

B. The board will recommend to the Board of Medicine each successful candidate the Board of Psychology examines for licensure as a clinical psychologist.

C. A psychologist, clinical psychologist or a school psychologist who desires to practice in other areas of psychology shall obtain a license from this board for the additional area in which the licensee seeks to practice.

PART V.
LICENSURE RENEWAL; REINSTATEMENT.

§ 5.1. ~~Biennial~~ *Annual* renewal of licensure.

Every license issued by the board shall expire on June 30 of each ~~odd-numbered~~ year.

A. Every licensee who intends to continue to practice shall, by June 30 of each ~~odd-numbered~~ year, submit to the board:

1. A license renewal application on forms supplied by the board; and

2. The renewal fees prescribed in § 1.3.

B. Failure of a licensee to receive a renewal notice and application form(s) from the board shall not excuse the licensee from the renewal requirement.

§ 5.2. Late renewal; reinstatement.

A. A person whose license has expired may renew it within ~~four~~ *two* years after its expiration date by paying the penalty fee prescribed in § 1.3 and the license renewal fee for each year the license was not renewed.

B. A person whose license has not been renewed for ~~four~~ *two* years or more and who wishes to resume practice shall:

1. Present evidence satisfactory to the board regarding continued competency to perform the duties regulated by the board; and

2. Upon approval for reinstatement, pay the penalty fee and the license fee for each renewal period the license was not renewed, as prescribed by the board and pay a rereview fee as prescribed in § 1.3.

PART VI.
ADVISORY COMMITTEES.

§ 6.1. Advisory and examining committees.

A. The board may establish examining and advisory committees to assist it in evaluating the professional qualifications of applicants and candidates for licensure and in other matters.

B. The board may establish an advisory committee to evaluate the mental or emotional competence of any licensee or candidate for licensure when such competence is at issue before the board.

C. The chair of all advisory and examining committees shall be a member of the Board of Psychology or board designee who will moderate the proceedings and report the results to the full board.

PART VII.
STANDARDS OF PRACTICE; UNPROFESSIONAL CONDUCT; DISCIPLINARY ACTIONS; REINSTATEMENT.

§ 7.1. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons licensed by the board shall:

1. Provide only services and use only techniques for which they are qualified by training and experience.

2. When advertising services to the public, ensure that such advertising is neither fraudulent nor misleading.

3. Represent accurately their competency, education, training and experience.

4. Neither accept nor give commissions, rebates or

other forms of remuneration for referral of clients for professional services.

5. Make advance financial arrangements that safeguard the best interests of and are clearly understood by their clients.

6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services.

7. Avoid dual relationships with clients that could impair professional judgment or compromise the client's well being (to include but not limited to treatment of close friends, relatives, employees and sexual intimacies with clients; bartering services; romantic or sexualized relationships with any current supervisee.

8. Avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by the action.

9. Keep confidential their professional relationships with clients, including their records and reports, except when a client is a danger to self or others, or when the licensee is under a court order to disclose such information.

10. Terminate a professional psychological relationship when it is clear that services are not benefiting the client.

11. Ensure that the welfare of clients is not compromised in any experimentation or research involving those clients.

12. Report to the board known violations of the laws and regulations governing the practice of psychology.

13. Represent oneself as a licensed psychologist only when licensed by the board as a psychologist.

14. Represent oneself as a licensed school psychologist only when licensed by the board as a school psychologist.

15. Represent oneself as a licensed clinical psychologist or otherwise use variations of the description clinical psychology to describe one's practice only when licensed by the Board of Medicine as a clinical psychologist.

16. Not represent oneself as "board certified" without specifying the complete name of the specialty board.

17. Keep pertinent, confidential records for at least seven years with adults and organization and 10 years with minors after termination of services to any consumer.

§ 7.2. Grounds for revocation, suspension, or denial of renewal of license.

A. In accordance with § 54.1-2400 of the Code of Virginia, the board may, after a hearing, revoke, suspend or decline to renew a license for just cause.

B. Action by the board to revoke, suspend or decline to renew a license shall be taken in accord with the following conduct:

1. Conviction of a felony or misdemeanor involving moral turpitude.

2. Procuring of a license by fraud or misrepresentation.

3. Misuse of drugs or alcohol to the extent that it interferes with professional functioning.

4. Negligence in professional conduct or violation of practice standards.

5. Performing functions outside areas of competency.

6. Mental, emotional, or physical incompetence to practice the profession.

7. Violating or aiding and abetting another to violate any provision of Chapter 36 of Title 54.1 of the Code of Virginia; any other statute applicable to the practice of the profession regulated; or any provision of these regulations.

C. Appeal of decision.

An appeal may be made to the board for reinstatement upon good cause or as a result of substantial new evidence being obtained that would alter the determination reached in subsection B of this section.

§ 7.3. Reinstatement following disciplinary action.

A. Any person whose license has been suspended, revoked, or not renewed by the board under the provisions of § 7.2 may, two years subsequent to such board action, submit a new application to the board for licensure.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fees applicable at the time of reinstatement, as prescribed by the board.

NOTICE: The forms used in administering the Regulations Governing the Practice of Psychology are not being published due to the large number; however, the name o

each form is listed below. The forms are available for public inspection at the Board of Psychology, 6606 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Application for Examination or Licensure, Form - 1

Registration for Post-Doctorate Degree or Post-Master's Degree Residency Training Experience for the Board of Psychology, Form - 2

Post-Doctorate Degree or Post-Master's Degree Verification of Supervision, Form - 3

Internship Verification, Form - 4

Employer Verification, Form - 5

Licensure Verification, Form - 6

Va.R. Doc. No. R93-740; Filed July 21, 1993, 4:39 p.m.

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Corrections will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 230-30-007. Supervision Fee Rules, Regulations and Procedures.**

Statutory Authority: § 53.1-150 of the Code of Virginia.

Effective Date: September 22, 1993.

Summary:

The 1993 session of the General Assembly amended § 53.1-150 of the Code of Virginia to stipulate that individuals who are delinquent in making supervision fee payments may be required to perform community service in lieu of making outstanding payments.

This action requires the Board of Corrections to amend the Supervision Fee Rules, Regulations and Procedures to include information for the field on how to manage individuals who might be required to perform community service.

VR 230-30-007. Supervision Fee Rules, Regulations and Procedures.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Community service" means any unpaid service or work performed for the community or for the good of the community at an approved nonprofit public or private organization.

"Delinquency" means a person is delinquent after missing one monthly supervision fee payment.

"Employment" means any service, including service in interstate commerce, performed by an individual for remuneration or under any contract for hire, written or oral, expressed or implied.

"Exclusion from community service" means having clinical documentation of a physical, mental or emotional disability which precludes the performance of community service by the client.

"Income" means any money received from all sources, exclusive of social security and welfare.

"Legal dependents" means those persons legally eligible to be listed as exemptions for federal income tax purposes.

"Month" means a calendar month or fraction thereof.

"Monthly gross income" means income received in a calendar month.

"Outstanding payments" means the required amount of supervision fee payments which are owed but have not been paid.

"Supervision" means that period of time from opening the case by executing a community release agreement, the Conditions of Probation or Parole, or a Community Diversion Incentive (CDI) Program diversion agreement until the case is terminated, or timely payments have been made for 60 months.

"Unable to work" means having clinical documentation of a physical, mental, or emotional disability which precludes work or employment for the client.

"Unreasonable hardship" means monthly gross income is less than the federal poverty guidelines provided by the Department of Social Services.

"Unreasonable hardship due to extenuating circumstances" means monthly gross income is reduced below federal poverty guidelines because of payments on financial obligations caused by court ordered sanctions, natural disasters, unreimbursed medical expenses, or other unusual circumstances.

"Verified income" means written documentation establishing the client's income, such as check stubs, contracts, legal documents, etc.

§ 1.2. Supersession.

These standards supersede the "Supervision Fee Rules and Regulations" adopted by the Board of Corrections on ~~December 5, 1990.~~ *August 19, 1992.*

§ 1.3. Eligibility.

All adults and juveniles sentenced as adults are subject to the provisions of § 53.1-150 of the Code of Virginia *until they are terminated from supervision, are transferred to another state, or have complied with the 60-month provision* with these notations:

1. A person shall not be liable for payment for the last month of supervision.

2. A person shall not be subject to double monthly fees in the event of concurrent supervision requirements.

3. In the event of concurrent parole and probation or CDI participation, the district or program shall open the case according to existing program procedures and the fee collection shall be assigned to the active status.

4. In the event of concurrent work release, parole, community diversion or probation, the Department of Corrections (DOC) Accounts Receivable Section shall be responsible for collecting the fees.

5. Persons sentenced in Virginia who transfer to another state and transfer back to Virginia are subject to the fee payment when accepted for supervision.

6. Persons placed on probation without a suspended sentence or with a final sentence deferred excluding persons subject to the provisions of § 18.2-251 of the Code of Virginia are subject to the fees unless exempted by the sentencing court.

7. Persons entering probation, parole, CDE, or state work release on or after July 1, 1992, may be required to perform community service if they are unemployed or exempted from supervision fee payments.

~~8. All persons subject to the provisions of § 53.1-150 of the Code of Virginia are obligated for fee payments unless and until they are exempted, are terminated from supervision, or comply with the 60-month provision.~~ *Persons who become delinquent in making supervision fee payments may be required to perform community service in lieu of making outstanding payments.*

PART II.
ADMINISTRATIVE PROCEDURES.

§ 2.1. Intake process.

A. All probationers, parolees, state work releasees entering supervision on or after July 1, 1981, and CDI offenders who agree to diversion on or after July 1, 1988, shall have the provisions of § 53.1-150 of the Code of Virginia and the Supervision Fee Rules and Regulations explained to them by the supervising probation and parole officer, work release counselor, or CDI case manager, respectively.

B. Explanation of this obligation shall be given at the time of initial interview and be evidenced by execution of a client introduction form. The original completed form shall be distributed to the client case file and the client shall receive a copy.

C. Refusal to sign the client introduction form does not relieve the person of the requirements of § 53.1-150 of the Code of Virginia. The supervising officer, work release counselor, or CDI case manager should note this occurrence on the form, sign it and distribute the copies as shown in subsection ~~2.1~~ B *of this section* .

D. A supervision fee record shall be set up on each probationer, parolee, or state work releasee entering supervision on or after July 1, 1981, and each person entering community diversion status on or after July 1, 1988. The record system may be manual or automated.

§ 2.2. Exemptions and exclusions.

A. Section 53.1-150 of the Code of Virginia allows for the exemption of eligible persons from the fee payment obligation if approved by proper authority on the grounds of unreasonable hardship or unreasonable hardship based on extenuating circumstances. Persons may be excluded from performing community service in lieu of payments at the discretion of the appropriate authority specified in the statute.

B. Exemption and exclusion application.

1. A person may apply for an exemption at any time after entering active supervision and completing either the client introduction form or the revised community release agreement. Documentation of hardship shall be provided by the person seeking exemption or exclusion.

2. If an exemption based on unreasonable hardship is denied, the client may apply for an exemption based on unreasonable hardship due to extenuating circumstances.

3. Persons denied an exemption or exclusion for any reason may reapply whenever their circumstances change.

C. Exemption or exclusion process.

1. Exemptions for unreasonable hardship or for unreasonable hardship based on extenuating circumstances and exclusion from performing

community service.

a. The exemption and exclusion process for parolees shall be according to procedures approved by the Virginia Parole Board.

b. The exemption and exclusion process for probationers and CDI participants shall be according to procedures approved by the sentencing court.

c. The exemption and exclusion process for state work releasees shall be according to procedures approved by the Department of Corrections.

2. The Division of Community Corrections will annually review and issue the federal poverty guideline information needed to determine unreasonable hardship and set the hourly value of community service work.

D. Exemption and exclusion termination process.

1. Exemptions and exclusions shall be terminated when the reasons for which the exemption or exclusion was granted are no longer valid.

The supervising officer, CDI case manager, or work release program staff member shall document the invalidity and recommend exemption or exclusion termination to the chief officer, CDI program director, or work release director.

2. The chief probation and parole officer, CDI program director, or appropriate work release program administrator may recommend termination of an exemption(s) or exclusion to the proper authority.

3. The supervising officer, CDI case manager, or work release program staff member is responsible for monitoring the exemption and exclusion reasons at least quarterly.

4. There is no appellate procedure for termination by the exempting or excluding authority.

PART III.
PAYMENTS AND COLLECTION PROCEDURES.

§ 3.1. Payments.

A. Payments specified in § 53.1-150 of the Code of Virginia or the sentencing general district court may be made in full or in part. This allows advance payments.

B. Payments or community service for obligations in the preceding calendar month shall be due no later than the fifth day of the following month.

C. Payments shall be in the form of certified checks, cashier's checks, corporate checks, or money orders and made payable to the Department of Corrections, or other means as approved by the director.

D. The employer may deduct the fee payment from the person's pay and forward the payment to the district office, or CDI program office whichever is supervising the client.

E. All payments shall be made in person to the supervising officer or the CDI case manager, or mailed to the district office or CDI program office, as appropriate.

F. Payment or community service obligations shall commence with the calendar month in which the exemption or exclusion terminated.

§ 3.2. District/CDI program collection procedures.

A. The chief probation and parole officer or CDI program director are responsible for monitoring compliance with the fee collection rules and regulations in the probation and parole district or CDI program area.

B. The chief officer or CDI program director may establish written local office procedures to monitor compliance with the rules and regulations, subject to the approval of the regional community corrections manager.

C. Probation and parole district and CDI offices shall issue sequentially numbered receipts or their approved accounting equivalent, to offenders upon payment. Clients should be strongly urged to retain the receipts in the event of theft or loss. The receipt system may be manual or automated.

D. All payments shall be deposited in accordance with DOC Accounts Receivable Section policies and procedures.

E. Probation and parole district and CDI offices shall post all supervision fee records each month for all activity within the preceding calendar month.

1. The entries shall show:

a. Amount paid - $30.

b. Exemption - Ex-1; Ex-2.

c. Unemployed - UN.

d. Community service - CS plus number of hours worked.

e. Excluded - EXC.

f. Delinquency - DEL.

g. Interstate - IS.

h. Ineligible - IN.

i. Closed - CL.

2. The entries shall show the date of the entry and the initials of the person making the entry.

F. All delinquent persons for a calendar month shall be identified and the delinquency procedures initiated in accordance with § 3.6.

G. Any shortage shall be reported immediately to the regional community corrections manager and to the DOC Accounts Receivable Section in writing. Every effort shall be made to recover lost or stolen payments.

H. Every effort shall be made to determine the source of unidentified payments. The regional community corrections manager and the DOC Accounts Receivable Section shall be notified in writing if such efforts are unsuccessful.

§ 3.3. State work release collection procedures.

A. The work release facility director, for persons in state facilities, or the community corrections managers, for persons subject to the fee in local programs, shall monitor compliance with the fee collection rules and regulations at the unit or facility.

B. Subject to the approval of the regional administrator for state facilities or community corrections manager, the work release program facility director shall establish written local office procedures to monitor compliance with the rules and regulations.

C. The work release facility directors, for persons in state facilities, or the community corrections managers, for persons subject to the fee in local programs, shall advise the DOC Accounts Receivable Section of any work releasee subject to fee collection.

D. Program facility directors or community corrections managers shall advise the DOC Accounts Receivable Section in writing when persons are exempted from fee collection or are no longer subject to the provisions of § 53.1-150 of the Code of Virginia.

E. The DOC Accounts Receivable Section shall deduct the supervision fee each month from the pay of each person subject to the fee. The deductions, associated recordkeeping, and fund transfers shall be made in a manner consistent with generally accepted accounting principles and in a manner specified and approved by the DOC Assistant Comptroller, Accounting Operations.

F. All supervision fee records shall be posted as required in § 3.2.

§ 3.4. General Accounting DOC (Accounts Receivable Section) procedures.

A. The DOC Assistant Comptroller, Accounting Operations shall prepare a monthly report for the deputy director, Community Corrections concerning fees collected.

B. The DOC Assistant Comptroller Accounting Operations shall, according to generally accepted accounting principles, establish any fiscal procedures deemed necessary and not otherwise set forth to receive, account for, and disburse funds collected under the provisions of § 53.1-150 of the Code of Virginia.

§ 3.5. Refunds of payments.

A. Requests for refunds shall be made to the DOC Accounts Receivable Section by the chief probation and parole officer, CDI program director, or work release facility director in writing.

B. Any refunds authorized by the DOC Accounts Receivable Section shall be in accordance with accepted accounting principles or applicable state requirements.

§ 3.6. Delinquency procedures.

A. The probation and parole officer or CDI case manager shall make every effort to encourage clients to meet their supervision fee obligations.

B. The chief probation and parole officer and CDI program director shall develop written local office procedures, subject to the approval of the regional community corrections manager for identifying delinquent clients and recovering outstanding fee payments.

C. All persons failing to make payment or complete community service work for the preceding calendar month will be mailed a supervision fee delinquency notice by the supervising officer or case manager. Under § 53.1-150 of the Code of Virginia, more than two months delinquency may constitute sufficient grounds for revocation of parole, probation, work release, or community diversion status.

D. In the event of alleged violation by parolees, action shall be taken according to existing Parole Board violation procedures.

E. For probationers and CDI participants, the delinquency shall be noted in the case file. The sentencing court shall be notified of the delinquency, along with any recommendation, by the supervising officer or case manager.

F. Delinquency by state work releasees shall be identified and addressed by the work release facility director according to divisional guidelines.

G. The Director of Corrections may establish any other policies and procedures necessary to address delinquencies and improve collection rates.

PART IV.
TRANSFER AND CLOSURE PROCEDURES.

§ 4.1. Transfer procedures.

A. Transfers from work release or community diversion incentive to parole or probation.

1. Persons subject to the provisions of § 53.1-150 of the Code of Virginia being released from state work release status or CDI program participation to probation or parole supervision shall be terminated from the work release or CDI program according to existing program procedures.

2. The work release unit facility director shall notify the DOC Accounts Receivable Section of the program termination and send a copy of the notice to the central criminal file and local case file. The supervision fee record shall be marked "closed."

3. The chief probation and parole officer shall enter such persons into supervision as a new case.

B. Transfers from parole to probation or vice versa.

Persons concluding either parole or probation supervision with a continuing probation or parole obligation shall have the supervision fee obligation continued without interruption.

C. Transfers to other districts or programs.

Persons may transfer to another probation and parole district or from one CDI program to another according to existing program procedures.

1. The supervision fee record, the client introduction form and the hardship exemption and exclusion application, if applicable, shall be included in the final transfer material. The sending district or CDI program shall mark the record "closed" and retain a copy.

2. The case file shall reflect the transfer of these materials and the person's supervision fee status.

3. The receiving district or program shall continue the supervision fee collection process without interruption.

D. Transfer to or from other states.

1. Persons may transfer to or be received from other states according to existing interstate compact procedures. However, upon the effective date of transfer, they are not subject to the supervision fee payment.

2. Persons transferring to another state are obliged to pay the supervision fee until the effective transfer date, except that they shall not be charged for the last month of supervision. The sending district shall mark the record "closed" and retain it.

§ 4.2. Closure procedures.

A. Client supervision fee payment obligations may be terminated by death, discharge, interstate transfer, or revocation.

B. Cases should be closed in accordance with existing program procedures including a reference to the supervision fee status.

C. The DOC work release accountant shall be advised of any work release case closing, in writing, by the work release facility director with a copy forwarded to the central criminal file.

D. The supervision fee record shall be posted with a closed entry and retained in the district, unit, or CDI program file.

PART V.
EXTERNAL REQUIREMENTS AND LIMITATIONS.

§ 5.1. External requirements.

All rules, regulations, and procedures are subject to any applicable auditing requirements and all records are governed by any applicable state library or statutory requirements.

§ 5.2. Limitations.

These regulations set forth the responsibilities of Department of Corrections and Community Diversion Incentive Program employees and do not establish rights or entitlements for any person subject to the provisions of § 53.1-150 of the Code of Virginia.

VA.R. Doc. No. R93-753; Filed August 4, 1993, 11:21 a.m.

DEPARTMENT OF EDUCATION

Title of Regulation **VR 270-01-0052. Standards for Approval of Teacher Preparation Programs in Virginia (REPEALED).**

Title of Regulation: **VR 270-01-0052:1. Regulations Governing Approved Programs for Virginia Institutions of Higher Education.**

Statutory Authority: §§ 22.1-16 and 22.1-298 of the Code of Virginia.

Effective Date: September 23, 1993.

Summary:

The Regulations Governing Approved Programs for Virginia Institutions of Higher Education state the criteria for the approval of programs training teachers, administrators, and other school personnel in the colleges and universities in Virginia. The regulations are established to require a level of quality in the professional education sequence f

prospective teachers, to encourage institutions to meet rigorous academic standards of excellence in education, and to facilitate reciprocity in the licensing of teachers and administrators across states.

The approved program approach permits institutions of higher education to establish preparation programs for initial teacher licensure. The regulations provide requirements for program establishement, organization and administration, program content, admission policies and practices, facilities and instructional materials, and procedures for applying the standards. This process (approved programs) also ensures Virginia's participation in the Interstate Certification Compact for reciprocity agreements concerning teacher licensure.

Current regulations, VR 270-01-0052, Standards for Approval of Teacher Preparation Programs in Virginia, are being repealed.

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

Agency Contact: Copies of the regulation may be obtained from Margaret N. Roberts, Department of Education, James Monroe Building, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540. There may be a charge for copies.

VR 270-01-0052:1. Regulations Governing Approved Programs for Virginia Institutions of Higher Education.

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 major" means the sequence of courses and experience in an arts or sciences discipline. Examples of academic majors include chemistry, mathematics, English, foreign languages, and similar courses. Exceptions to this policy will include all the areas of vocational education, health, and physical education.

"Advanced program" means a post-baccalaureate degree program for the advanced preparation of teachers and other professional school personnel. Graduate credit is commonly awarded. Master's, specialist, and doctoral degrees are included, as well as nondegree programs offered at the graduate level.

"Basic program" means a college or university program for the initial preparation of teachers. The courses commonly lead to a baccalaureate degree; exceptions may include the MAT or other extended programs designed to prepare teachers for initial licensure.

"Campus-based experiences" means those that are provided on the campus of the higher education institution and include, but are not limited to, simulation activities, learning laboratories, microteaching clinics, demonstration centers, laboratory schools, and experiences with instructional technology.

"Campus-based supervisor" means the college or university faculty member(s) assigned to supervise clinical and field-based experiences for basic or advanced programs is a supervisor of clinical and field-based experiences.

"Clinical experiences" means those that are characterized by careful planning, stipulated goals, required activities, projected performance levels and evaluation of growth. Included are microteaching clinics, participation experiences, skill clinics, developing case studies of individual students, curriculum development clinics, and use of instructional technology or computers. These are conducted both as school based and campus based experiences. Activities not meeting the criteria for clinical experiences might include general observations, voluntary community service, orientation visits, teacher aiding, and periodic visitations to educational settings.

"Criteria for compliance" means specific elements that clarify a state standard. Institutions should present evidence for addressing all criteria for compliance to enable the visiting team to make informed and accurate judgments about whether a standard is met.

"Cultural diversity" means the cultural backgrounds of all students and school personnel with particular emphasis on their ethnicity, race, religion, socioeconomic status, and gender.

"Dean, director, or chair of education" means the individual designated to represent the professional education unit. The person should be delegated the authority and responsibility for the overall administration and operation of the professional education unit.

"Education students" means individuals who have elected to pursue programs for the preparation of teachers or other professional school personnel. They include those students who seek initial licensure or are in advanced professional education programs, or both.

"Exceptional populations" means students who possess physical, mental, or emotional exceptionalities which may necessitate special attention by school personnel.

"External program review" means the evaluation of the operation, scope, and quality of professional education programs by an individual, team, or agency not connected directly to the college/university. Examples of external program reviews would be evaluations from experts in a

program area, a state program approval visit, and follow-up studies of graduates and their employees.

"Faculty development" means the provision of opportunities for faculty to develop new knowledge and skills through in-service education, sabbatical leave, travel support, summer leave, intra- and inter-institutional visitations, fellowships, work in NK-12 schools, and similar opportunities.

"Faculty in the professional education unit" means those persons who teach one or more courses in professional education, provide professional services to education students (e.g., advising or student teaching supervision), or administer some portion of the professional education unit.

"Field-based experiences" means those that are conducted at a school site, a school administration center, a school clinic, or community agency. These experiences might include classroom observations, tutoring, assisting school administrators or teachers, participating in school and community-wide activities, student teaching, and internships. Planning is shared by the professional education unit and the appropriate agency.

"Full-time faculty" means the professional personnel employed by an institution of higher education with full-time assignments within the unit as instructors, professors at different ranks, administrators, or other professional support personnel (e.g., student teaching supervisor or advisor).

"Global perspective" means the recognition of the interdependence of nations and peoples and the interlinking political, economic, and social problems of a transnational and global character.

"Governance" means responsibility for basic policy development, program initiation, on-going evaluation, leadership and coordination with other campus units, the maintenance and support of all professional programs, selection and evaluation of faculty, and fiscal matters. Governance establishes ultimate accountability for the quality of programs in professional education and the quality of students who are graduated from professional programs.

"Inquiry" means the active involvement in one's academic major. This involvement could range from knowledge generation to exploration and questioning of the field. It includes, but is not limited to, research, publishing, in-service training, speeches, study, attendance at conferences, and participation in professional associations.

"Institutional report" means a written report prepared by the institution seeking accreditation. It is a qualitative self-study of the professional education unit, including its curricula, students, faculty, and governance. A primary purpose of the institutional report is to describe how the professional education unit meets state standards.

"Internal program review" means the evaluation of the operation, scope, and quality of professional education programs by an individual or committee within the college/university. It includes self-studies by faculty in the program area and evaluations of a program that is conducted by an interdepartmental or interschool committee.

"Knowledge base" means the assumptions, theories, and research findings which provide the foundations that support the model(s) on which the program is founded, articulated, implemented, and evaluated.

"Licensure" means the official recognition by a state governmental agency that an individual has met state mandated requirements and is, therefore, approved to practice as a duly certified/licensed educator in the Commowealth. Licensure is used synonymously with certification by many states.

"Model" means a coordinated and articulated system or design for the preparation of professional school personnel that has a knowledge base to support it. A professional education unit might adopt one or more models to undergird its programs. Models might be based on direct instruction, cognitive development, individual differences, cultural diversity, reflective teaching, effective schools, or behaviorism, or similar programs.

"Multicultural perspective" means a recognition of (i) the social, political, and economic realities that individuals experience in culturally diverse and complex human encounters and (ii) the importance of culture, race, and gender, ethnicity, religion, socioeconomic status, and exceptionalities in the education process.

"Part-time faculty" means individuals who are employed by an institution of higher education for less than a full load assignment in the professional education unit. Some part-time faculty are full-time employees of the college or university with a portion of their assignment in the professional education unit. Other part-time faculty are not full-time employees of the institution and are commonly considered temporary employees and not eligible for tenure consideration.

"Practicum" means an intensive experience in which education students practice professional skills and knowledge. Student teaching and internships are examples of a practicum.

"Practitioner" means a professional educator who is currently employed as a certified teacher, supervisor, administrator, counselor, school psychologist or other professional school personnel in the NK-12 school setting.

"Professional education faculty" means those persons who teach one or more courses in professional education, provide professional services to education students, or administer some portion of the professional education unit

"Professional education unit" means the college, school, department, or other administrative body within the institution that is primarily responsible for the preparation of teachers and other professional education personnel. Not all of the programs for the preparation of school personnel need to be administratively located within the unit. However, the state standard on governance requires that all professional education programs are organized, unified, and coordinated by the unit.

"Professional educators" means individuals who are engaged in some aspect of the teaching/learning enterprise. Included are teachers, supervisors, administrators, and other professional education personnel who hold valid licenses to practice in one or more of those roles. Also included are professors and administrators in colleges and universities.

"Professional studies" or "professional education" means that portion of the total preparation program that prepares education students to work effectively in their professional education roles. Sometimes referred to as professional education, it includes pedagogical, theoretical, and practicum studies.

"Program" means the sequence of courses and experiences in general, academic major, and professional studies required by a college/university for the preparation of professional education candidates to teach a specific subject or academic area, to provide professional education services (e.g., school psychology or counseling), or to administer schools. A program area will be a major in an academic area with professional education requirements for licensure. In many cases, the program sequence leads to licensure to practice in a specific state. Programs offered in professional education are usually described in the college/university catalog. The Commonwealth considers endorsement areas as programs. Exceptions to this policy will include all areas in vocational education, health, and physical education.

"Program approval" means the process by which a professional education program is recognized by a state as meeting state standards for the content and operation of such programs.

"Scholarly performance" means the active involvement in one's academic or specialty area. It is demonstrated by faculty through such activities as research, articles published in referred journals, program evaluation studies, documentation of on-going activities, grant-seeking, or presentations at professional meetings.

"School-based educators" means a certified professional practitioner who teaches, administers or otherwise serves students enrolled in preschool, elementary, junior high/middle, or secondary schools as a school-based educator.

"School-based supervisor" means a licensed practitioner who provides on-site supervision and direction for education students during field-based assignments. Frequently called cooperating teacher, cooperating supervisor, clinical faculty, or mentor teacher they must be certified and experienced in the area in which supervision is provided.

["Speciality area" means the sequence of courses and experiences in the academic or professional area that the education student plans to teach, for the grade level at which the student plans to teach, or for the services that the student plans to provide. Examples of speciality areas include, science, elementary education, counseling, principalship, reading and physical education.]

"State approval" means governmental activity requiring all professional education programs within a state to meet standards of quality so that their graduates will be eligible for state licensure. It is synonymous with program approval.

"Student teaching" means an in-depth, direct teaching experience conducted in a school setting. It is considered a culminating field-based experience for the basic teacher preparation program. State criteria stipulate that the full-time assignment must be for at least 150 hours of direct teaching and that the experience shall be supervised by both a college-based and a school-based supervisor.

"Teacher educators" means professional educators who serve as the training arm of the teaching profession. In addition to areas of specialization, these faculty demonstrate knowledge of and commitment to general teacher preparation. Included are faculty in professional education units and school-based practitioners who serve as supervisors of practicum students during early experiences and student teaching.

"Terminal degree" means the highest level of educational attainment expected for full participation in a given endeavor. For the field of professional education, the Ed.D. and the Ph.D. are terminal degrees.

"Unit approval" means a process that guarantees that critical aspects of the professional education unit are viewed and evaluated as a basis for determining state approval. The total professional education unit is evaluated for state approval. A composite assessment of the unit guides state approval actions.

PART II.
APPROVED PROGRAM APPROACH TO TEACHER EDUCATION AND LICENSURE.

§ 2.1. Approved Teacher Preparation Program.

The Virginia "Approved Teacher Preparation Program" shall require the following:

1. Programs shall be developed and approved in accordance with the established standards for the Board of Education, the Council of Higher Education,

and the Southern Association of Colleges and Schools;

2. Programs shall be reviewed and evaluated in terms of the established standards and criteria for compliance and in terms of procedures as set forth in the approved program document;

3. Candidates for initial licensure as principals shall be required to complete a state approved program;

4. Candidates for initial licensure as teachers shall be required to complete a state approved program; exceptions to this regulation are listed § 2.2.

§ 2.2. Exceptions.

Exceptions to initial licensure by the approved program approach will be restricted to the following:

1. Individuals eligible through reciprocity who have taken a competency examination prescribed by the Board of Education;

2. Individuals seeking the Vocational Education License; and

3. Individuals seeking the Alternative Route to Licensure.

PART III.
APPROVED PROGRAM REQUIREMENTS AT VIRGINIA COLLEGES AND UNIVERSITIES.

§ 3.1. Purpose.

Teacher education and the approved program process are the cooperative responsibility of institutions of higher education, local school divisions, and the Department of Education. The purposes of the approved program process are to assist prospective teachers in developing the background necessary for quality classroom instruction in the public schools, to require a level of quality in the professional education sequence for prospective teachers that fosters competent practice of graduates, to encourage institutions to meet rigorous academic standards of excellence in professional education, and to facilitate reciprocity in the teacher licensure/certification process across states.

§ 3.2. Approval of teacher preparation programs.

An institution seeking approval of its teacher preparation programs shall submit required documentation prior to the three-day on-site review and meet established state standards during 10 years with a subsequent interim five-year on-site mini-review. The interim on-site five-year mini-review for continuing approval will require institutions to respond to weaknesses identified in the previous on-site review, changes in the program since the last review, and any new standards developed and approved by the Commonwealth.

§ 3.3. Standards and criteria categories.

State standards address five basic categories: (i) the knowledge base for professional education, (ii) relationship to the world of practice, (iii) students, (iv) faculty, and (v) governance and resources. There are a total of 18 standards and 97 criteria for compliance within these five categories. Incorporated into the standards and criteria are the nine guidelines for restructuring teacher education as approved by the Board of Education. All standards and criteria for compliance shall be addressed by the institution applying for state approval. [The criteria for compliance that accompany each standard are designed to clarify the standard. They are not standards in and of themselves.] Institutions of higher education seeking state approval shall prepare an institutional report that responds to the standards. [It is possible for an institution to be judged to meet a standard without addressing each criterion for compliance. In such cases, other evidence for meeting the standard would have to be offered by the institution.] In preparing for continuing approval review every five years, institutions shall respond to weaknesses identified in the previous on-site review, changes in the program since the last review, and any new state standards.

PART IV.
PRECONDITIONS FOR STATE APPROVED PROGRAM REVIEW.

§ 4.1. Precondition 1.

A. There is a written description of the professional education unit that is primarily responsible for the preparation of teachers and other professional education personnel.

B. Required documentation.

1. Verification by an appropriate central administration officer of the unit(s) with primary responsibility for professional education and the unit's authority;

2. Chart depicting all programs for the preparation of school personnel in the institution and their relationship to the unit;

3. Program summary that includes the number of graduates by program and level including post-graduate;

4. Unit statement of mission, purpose, or goals; and

5. Summary of meetings and actions of the professional education unit for the preceding year.

§ 4.2. Precondition 2.

A. A dean, director, or chair is officially designated to represent the unit and assigned the authority and

responsibility for its overall administration and operation.

B. Required documentation.

1. Job description for dean, director, or chair; and

2. Chart depicting administrative and organizational structure of the unit.

§ 4.3. Precondition 3.

A. There are written policies and procedures upon which the operations of the unit rest.

B. Required documentation.

Official policies and procedures of the unit, such as a policy manual or constitution and by-laws.

§ 4.4. Precondition 4.

A. The unit regularly monitors and evaluates, both internally and externally, its operation, scope, quality of its offerings and effectiveness of its graduates.

B. Required documentation.

1. Policies for conducting on-going evaluation review;

2. Summary of evaluation report(s) completed within last five years documenting internal program review;

3. Summary of evaluation report(s) completed in last three years documenting external program review (for example, follow-up study of graduates and employers); and

4. Summary of recent program modifications based on evaluation results.

§ 4.5. Precondition 5.

A. The unit has criteria for admission to basic teacher education programs that include an assessment of basic skills using standardized tests or other appropriate measures prior to admission to the program.

B. Required documentation.

1. List of basic skills that are assessed and standardized instrument(s) and other measures used;

2. Published criteria for admission to professional education programs; and

3. Summary report of test results or other measures for students admitted for at least the past three years.

§ 4.6. Precondition 6.

A. The unit assesses the academic and professional competencies of education students at exit from all programs at all levels through multiple evaluation methods.

B. Required documentation.

1. List of assessment measures used to evaluate academic and professional education graduates; and

2. Summary report(s) of competency assessment outcomes for at least three years.

§ 4.7. Precondition 7.

A. The unit's approved program is being implemented.

B. Required documentation.

1. Copies of the most recent approval letter(s) from the state agency attesting that state standards have been met and the unit is fully approved.

2. Plan for recruitment of minority students in teacher education.

3. Plan for collaboration with members of the institution and local school division personnel.

4. Plan for attracting academically talented students in teacher education.

§ 4.8. Precondition 8.

A. The institution is fully accredited by the appropriate regional accrediting agency.

B. Required documentation.

A copy of the latest accreditation letter from the regional accrediting association showing that there is reasonable assurance of the overall quality of the institution in the general areas of finance, administration, facilities, student personnel, faculty, and instruction.

§ 4.9. Precondition 9.

A. The institution is an equal opportunity employer and does not discriminate on the basis of race, sex, color, religion, age, or handicap, consistent with § 702 of Title VII of the 1964 Civil Rights Act, which deals with exemptions for religious corporations, with respect to employment of individuals with specific convictions.

B. Required documentation.

A copy of the institution's official action pledging compliance with nondiscriminatory laws and practices.

§ 4.10. Precondition 10.

A. The institution submits descriptions for each approved endorsement. The institution submits descriptions for new

endorsements.

B. Required documentation.

1. Endorsements previously reviewed and approved.

2. Proposed program changes submitted, including:

a. Requests for changes in major or degree requirements;

b. Requests for waivers of the limit on professional studies;

c. Proposed changes in existing general studies, professional studies, or endorsement requirements; and

d. Requests for new programs or endorsements.

PART V.
STANDARDS FOR THE APPROVAL OF PROFESSIONAL EDUCATIONAL UNITS.

§ 5.1. Category I: Knowledge bases for professional education.

A. Design of curriculum.

The unit ensures that its professional education programs are based on essential knowledge, established and current research findings, and sound professional practice. Each program in the unit reflects a systematic design with an explicitly stated philosophy and objectives. Coherence exists between: (i) courses and experiences and (ii) purposes and outcomes.

Criteria for compliance.

1. The unit ensures that its professional education programs have adopted a model(s) that explicates the purposes, processes, outcomes, and evaluation of the program. The rationales for the model(s) and the knowledge bases that undergird them are clearly stated along with goals, philosophy, and objectives. The unit makes available to students, faculty, and general public printed statements which effectively communicate the orientation and intent of each program and specify the professional roles for which graduates are qualified.

2. The knowledge bases used in professional education are broad and include the traditional forms of scholarly inquiry as well as theory development related to professional practice.

3. The unit ensures that course work in general education, specialty studies, and professional studies complement one another.

4. The knowledge bases of the professional studies component(s) are reflected in (i) curricular design and planning; (ii) course syllabi; (iii) instructional design, practice, and evaluation; (iv) students' work; (v) use of major journals in the field by faculty and students; and (vi) faculty and students', especially graduate students, participation in research and synthesis.

5. The faculty responsible for professional education collaborate in the design, delivery, and evaluation of curriculum for the unit's programs.

B. Delivery of the curriculum.

The unit ensures that knowledge bases and best practice in professional education are reflected in the instruction offered. The instructional practices and evaluation are congruent with the current state of knowledge about curriculum design, instruction, and evaluation.

1. Instruction by faculty in the unit is congruent in content and process with best practice and current and established research.

2. Faculty instruction in the unit provides students with systematically varied models of instruction.

3. The institution as a whole regards the unit as one where instructional practice is consistently superior.

4. The unit maintains a rigorous, professional instructional quality control mechanism.

C. Content of the curriculum - general education.

The unit ensures that education students receive appropriate depth and breadth in an integrated course of study that is offered by faculty in the liberal arts and other general studies. At the advanced level, education students should have a solid grounding in general education that will allow for concentration on professional and specialty studies.

Criteria for compliance.

1. The general education component is a well-planned sequence of courses and experiences that includes theoretical and practical knowledge gained from studies in communications, mathematics, science, history, philosophy, literature, and the arts. (NOTE: This criterion applies to the basic level only.)

2. Education students are guided in the selection of general education courses that will provide an intellectual foundation in liberal arts and general studies and that are appropriate to the background of individual students. (NOTE: This criterion applies to the basic level only.)

3. Faculty in the unit and faculty who teach in the general education component collaborate on program

planning and evaluation of general education. (NOTE: This criterion applies to the basic level only.)

D. Content of the curriculum–academic major.

The unit ensures that education students attain a high level of academic competence and understanding in the areas in which they plan to teach or work.

Criteria for compliance.

1. The academic major is a well-planned sequence of courses and experiences that includes content, methodological, and clinical knowledge necessary for professional competence in teaching or other professional education assignments.

[~~2. The guidelines and standards of professional learned societies are consulted where applicable in the development of an appropriate sequence of courses for each academic major.~~ The speciality area is a well-planned sequence of courses and experiences that includes content, methodological, and clinical knowledge necessary for professional competence in teaching or other professional education assignments.]

[~~3. The academic major provides education students with a mastery of the structure, skills, concepts, ideas, values, facts and methods of inquiry that constitute their fields of specialization.~~ The guidelines and standards of professional educational learned societies are consulted where applicable in the development of an approproiate sequence of courses for each speciality area.]

4. Faculty in the professional education unit and faculty who teach in the major fields from other academic units collaborate in program planning and evaluation.

E. Content of the curriculum–professional studies.

The unit ensures that the professional studies component(s) prepares education students to work effectively in their specific education roles.

1. The professional studies component(s) is a well-planned sequence of courses and experiences that includes knowledge about professional education and relates it to the realities of practice in schools and classrooms.

2. The unit ensures that each course and experience of the professional studies component(s) is built upon and reflects defensible knowledge bases.

3. The professional studies component(s) includes knowledge about the (i) social, historical, and philosophical foundations of education; (ii) theories of human development and learning; (iii) research- and experience-based principles of effective practice; (iv) impact of technology and societal changes on schools; (v) evaluation, inquiry, and research; (vi) and educational policy.

4. Courses and experiences support the development of independent thinking, effective communications, the making of relevant judgments, professional collaboration, effective participation in the educational system, the discrimination of values in the educational arena, and professional ethics.

5. The professional studies component(s) for the preparation of teachers provides knowledge about and appropriate skills in learning theory, educational goals and objectives, cultural influences on learning, curriculum planning and design, instructional techniques, planning and management of instruction, design and use of evaluation and measurement methods, classroom and behavior management, instructional strategies for exceptionalities, classrooms and schools as social systems, school law, instructional technology, and collaborative and consultative skills. Courses and experiences ensure the development of classroom and time management, effective communication, knowledge of different learning styles, teaching strategies, and assessment techniques. (NOTE: This criterion applies to the basic level only.)

6. The unit provides for study and experiences that help education students understand and apply appropriate strategies for individual learning needs, especially for culturally diverse and exceptional populations.

7. The curriculum for professional studies component(s) incorporates multicultural and global perspectives.

F. Required degree in arts and sciences or appropriate discipline.

The unit ensures that education students meet institutional requirements for degrees in the arts and sciences (or disciplines appropriate to the initial endorsement being sought for vocational programs). (NOTE: This criterion applies to the basic level only.)

Criteria for compliance.

1. Baccalaureate students must meet institutional requirements for degrees in the arts and sciences or disciplines appropriate to the initial endorsement being sought.

2. Post-baccalaureate students seeking initial endorsement must meet the equivalent of an academic major in the arts and sciences or an appropriate discipline. The unit specifies criteria and procedures for determining such equivalency.

G. Limitation on professional studies.

The unit ensures that professional studies course work, not including field experiences, is limited to 18 hours for the bachelor's degree unless a waiver has been granted by the Board of Education. (NOTE: This criterion applies to the basic level only.)

Criterion for compliance.

Board of Education has approved all restructured programs, including subsequent amendments or waivers of the 18-hour limit, or both.

§ 5.2. Category II: Relationship to the world of practice.

A. Clinical and field-based experiences.

The unit makes certain that clinical and field-based experiences in the professional education curriculum are designed to prepare students to work effectively in specific education roles.

Criteria for compliance.

1. Field-based and clinical experiences are systematically selected to provide opportunities for education students to observe, plan, and practice in a variety of settings appropriate to the professional roles for which they are being prepared.

2. Clinical and field-based experiences provide education students with the skills that allow them to diagnose and solve problems that involve the application of the principles and theories from the knowledge bases of the particular professional program.

3. Field-based and clinical experiences are accompanied by professional supervision and feedback that include attention to instructional plans, characteristics of learners and instructional settings, structured observation of the experiences, and detailed debriefing relative to program goals.

4. Education students participate in field-based or clinical experiences with culturally diverse and exceptional populations.

5. Field-based and clinical experiences are sequenced to enable education students to develop the skills that will enable them to assume full responsibility for classroom instruction or other professional roles in schools.

6. The student teaching experience is direct, substantial, and full-day for at least 10 weeks. Standards require the prospective teacher to be in classrooms full-time for a minimum of 200 clock hours. At least 150 hours shall be in direct teaching activities, providing direct instruction, at the level of endorsement. If a NK-12 or K-12 endorsement is sought, teaching activities should be at both the elementary and secondary levels. (NOTE: This criterion applies to the basic unit only.)

7. Three-member teams of the college-based supervisor, field-based supervisor, and education student have a well-defined charge to support a successful experience as the education student assumes full-time responsibility in the school setting.

8. Sites are carefully selected for all field experiences, including cooperating schools and other professional internship locations, so that students are provided experiences consistent with the goals of the unit's programs.

9. The roles and responsibilities of education students, college-based supervisors and field-based supervisors who participate in field-based and clinical experiences are delineated in negotiated written agreements.

B. Relationships with graduates.

The unit maintains relationships with graduates from its professional education programs that include follow-up studies and assistance to beginning professionals.

Criteria for compliance.

1. The unit keeps abreast of emerging evaluation techniques and engages in regular and systematic evaluations, including follow-up studies, to determine the success and quality of graduates in the professional education roles for which they were prepared. The unit provides evidence of follow-up studies, to determine the success and quality of graduates in the professional education roles for which they were prepared. The unit provides evidence of follow-up procedures used to assess the effectiveness of the teacher preparation program.

2. The results of evaluation efforts, including, NTE and follow-up studies of graduates, are used by the unit to modify and improve programs.

3. The unit has developed arrangements with school districts in the area to provide assistance to its graduates who are first-year teachers or who are beginning other professional education roles as an extension of their professional education program. (NOTE: Encouraged but not mandatory.)

C. Relationships with schools.

The professional education unit maintains positive working relationships with schools to advance the goals of the profession and to promote the effective preparation of professional educators.

Criteria for compliance.

1. Positive working relationships with local schools are

developed and maintained to improve the delivery of quality education in NK-12 schools.

2. The unit and local schools cooperatively develop research questions and inquiry strategies to encourage the involvement of practicing professionals with professional education faculty to further develop and refine the professional knowledge bases.

3. Professional education faculty are regularly involved with the professional world of practice in preschool, elementary, or secondary schools.

§ 5.3. Category III: Students.

A. Admission.

The unit's admission procedures encourage the recruitment of quality candidates and those quality candidates represent a culturally diverse population.

Criteria for compliance.

1. Incentives and affirmative procedures are used to attract candidates with potential for professional success in schools.

2. Applicants from diverse economic, racial, and cultural backgrounds are recruited.

3. A comprehensive system, which includes more than one measure, is used to assess the personal characteristics, communications, and basic skills proficiency of candidates preparing to teach. This system includes, but is not limited to, (i) basic skills proficiency tests, (ii) faculty recommendations, (iii) biographical information, and (iv) successful completion of college/university course work with at least a 2.5 grade point average (GPA) on a 4-point scale. (NOTE: This paragraph of the criterion applies to the basic level only.)

A comprehensive system exists to assess the personal characteristics and academic proficiency of candidates seeking admission to an advanced program. This system includes, but is not limited to, (i) an evaluation of academic proficiency (e.g., the MAT or GRE), (ii) faculty recommendation, (iii) record of competence and effectiveness in professional work, and (iv) graduation from a regionally accredited college or university. (NOTE: This paragraph of the criterion applies to the advanced level only.)

4. Admission decisions are monitored to ensure that the published set of criteria delineating acceptable levels of performance for admission are applied.

5. Policies allow for alternatives to the established admission procedure to encourage the participation of individuals from under-represented groups and other students as determined by the unit.

B. Monitoring progress.

The unit has systematic procedures for monitoring the progress of education students from admission through completion of their professional education programs.

Criteria for compliance.

1. Systematic procedures and timelines for assessing student progress must include, but need not be limited to, the following data sources: (i) GPA, (ii) observations, (iii) faculty recommendations, (iv) demonstrated competence in academic and professional work (e.g., research or term paper), and (v) recommendations from the appropriate professionals in schools. If the National Teacher Examinations are used as part of these criteria, the information should be considered in monitoring student progress.

2. Consistent procedures and relevant criteria are used to determine eligibility for student teaching and other professional internships.

3. Systematic approaches are used to assist education students who are making unsatisfactory progress in their programs.

C. Advisory services.

The unit ensures that systematic academic and professional advising is available to all education students.

Criteria for compliance.

1. The unit's advisory system provides education students access to academic and professional assistance, including information about requirements (including institutional and state policies regarding NTE) needed to complete their professional education programs and be awarded licensure.

2. Education students have access to publications that describe all program requirements including general education, specialty studies, professional studies, and institutional policies, including clear statements of due process. Statements of specific program requirements in general education, the specialization area, and professional studies are made available to students and faculty and utilized in developing individual programs of study. All exceptions or waivers to requirements are recorded, justified, and approved by a designated representative of the unit.

3. Education students are made aware of the availability of social and psychological counseling services within the institution.

D. Completion of program.

The unit ensures that the academic and professional

competence of education students is assessed prior to granting recommendations for licensure or graduation.

Criteria for compliance.

1. Prior to being recommended for licensure or graduation, education students must be proficient in communication skills and their teaching or specialty fields. Students also must be able to demonstrate skills for effective professional practice.

2. Evaluation systems that assess the academic and professional competence of students include multiple sources of data such as performance of graduates as provided by the Commonwealth, standardized tests, course grades, and performance in classroom or school settings.

3. The application of a published set of criteria that specify acceptable levels of performance for exit from all professional education programs is monitored.

§ 5.4. Category IV: Faculty.

A. Qualifications and assignments.

The unit ensures that faculty involved in teacher preparation are qualified to perform their assignments and also reflect cultural diversity.

Criteria for compliance.

1. The composition of the faculty represents cultural diversity.

2. Faculty have earned the terminal degree or have exceptional expertise in their fields to qualify them for their assignments in professional education programs. They have formal advanced study or demonstrated competence through independent scholarly activities in [~~each~~ the] field of [specialization that they teach education] .

3. The faculty participate in activities designed to promote continuous professional development including curriculum improvement, advanced study, research, membership and involvement in professional and learned societies, and experiences with public schools.

4. Professional education faculty, faculty in subject matter fields, and school district personnel with responsibility for supervision of school based experiences, have preparation and experience for their respective roles and responsibilities in teacher education programs.

5. Part-time faculty meet the requirements for appointment to the full-time faculty.

6. Graduate students who are assigned to instructional roles are qualified in terms of formal study, experience, and training.

7. Cooperating teachers and other field-based supervisors have a minimum of three years of experience in the areas they are supervising and are licensed in the areas in which they are teaching or working.

B. Faculty load.

The unit ensures that policies allow for faculty opportunities in teaching, scholarship, and service.

Criteria for compliance.

1. Work load assignments accommodate faculty involvement in teaching, scholarship, and services, including curriculum development, institutional committee work, and other internal service responsibilities.

2. The teaching load of undergraduate faculty is no more than the equivalent of 12 semester hours; the teaching load of graduate faculty is no more than the equivalent of nine semester hours.

3. Faculty keep abreast of developing work and debates about research on teaching and professional education as well as recent scholarly work in the areas that they teach.

C. Faculty development.

A systematic, comprehensive plan for faculty development is used by the professional education unit to provide for faculty development.

1. Systematic and regular faculty development activities are provided for faculty, cooperating teachers, and others who may contribute to professional education programs.

2. Faculty are actively involved in professional associations, and provide education-related services, at the local, state, national, or international levels in their areas of expertise and assignment.

D. Faculty evaluation.

The unit implements a faculty evaluation system to improve faculty teaching, scholarly and creative activities, and services.

Criteria for compliance.

1. Faculty are regularly evaluated in terms of their contributions to the areas of teaching, scholarship, and service. These evaluation data are used in determining salary, promotion, and tenure.

2. Competence in teaching is evaluated through direct

measures of teaching effectiveness such as student evaluations.

3. Evaluations of faculty are systematically used to improve teaching, scholarly and creative activities, and service within the unit.

§ 5.5. Category V: Governance and resources.

A. Governance.

The governance system for the professional education unit ensures that all professional education programs are organized, unified, and coordinated to allow the fulfillment of its mission.

Criteria for compliance.

1. The goals of the professional education unit are congruent with the institution's mission.

2. The unit effectively carries out its responsibility and discharges its authority in establishing and implementing appropriate policies for governance, programs, admission and retention of education students, and faculty selection and development in professional education.

3. The unit effectively carries out its responsibility and discharges its authority in making decisions affecting professional education programs.

4. The unit effectively carries out its responsibility and discharges its authority for identifying, developing, and using appropriate resources for professional education.

5. The unit effectively carries out its responsibility and discharges its authority in developing and maintaining appropriate linkages with other units, operations, groups, and offices within the institution and with schools, organizations, companies, and agencies outside the institution.

6. The unit has, and regularly monitors, a long-range plan.

7. An officially designated professional educator administers the professional education unit.

8. A systematic plan ensures the involvement of teachers, education students and other education professionals in the unit's policy-making or advisory bodies for the purpose of recommending requirements and objectives for professional education programs.

9. Policies in the unit guarantee due process to faculty and students.

B. Resources.

Resources are available in the areas of personnel, funding, physical facilities, library, equipment, materials, and supplies that allow the professional education unit to fulfill its mission and offer quality programs.

1. Personnel resources.

a. There are sufficient numbers of faculty, including cooperating teachers and other field-based supervisors, to support programs offered by the unit. Each advanced degree program leading to the doctorate has at least three full-time faculty who have earned the doctorate in the field of specialization for which the degree is offered.

b. There are sufficient administrative, clerical, and technical staff to support programs offered.

c. Instructional resources for supervision of full-time clinical students do not exceed a ratio of [~~12~~ 15] full-time equivalent students to one full-time faculty member:

(1) Faculty loads are altered to reflect the provision of supervision in pre-student teaching practicum experiences.

(2) Institutions with clinical faculty programs have faculty load policies which insure adequate institutional involvement in the supervision of student teachers.

d. Support for faculty development is at least at the level of other units in the institution.

e. The use of part-time faculty, clinical faculty, and graduate students who teach in professional education programs is limited to prevent the fragmentation of instruction and the erosion of quality, and they are supervised by full-time faculty to ensure program integrity, quality, and continuity.

2. Funding resources.

a. The budget trends for the unit over the past five years and future planning indicate continued support for professional education programs.

b. The unit allocates its available resources to programs in a manner that allows each of them to meet its missions and needs.

c. Financial support provided during the last five years has been adequate for books in education, periodicals listed in Education Index, films and filmstrips, computer hardware and software, and other similar sources.

3. Physical facilities.

a. Facilities are accessible to individuals with disabilities.

b. For each professional education program offered, faculty have office space, instructional space, and other space necessary to carry out the unit's mission.

c. The facilities are well-maintained and functional.

d. Facilities accommodate technological needs in professional education.

e. An institutional long-range plan for renovation/updating of physical facilities (i.e., additions and replacements) has been developed.

4. Library, equipment, materials, and supplies.

a. Library holdings provide adequate scope, breadth, and currency to support the professional education programs.

b. Systematic reviews of library and media materials are conducted periodically and are used to make acquisition decisions.

c. An identifiable and relevant media and materials collection is accessible to education students and faculty.

d. Modern equipment is available to support administration, research, service, and instructional needs of the unit.

e. Necessary supplies are provided to support faculty, students, staff, and administration in the operation and implementation of programs, policies, and procedures.

VA.R. Doc. No. R93-745; Filed August 2, 1993, 11:10 a.m.

APPENDIX A

TEMPLATE FOR STATE SITE VISIT
VIRGINIA BOARD OF EXAMINERS (VBOE)

A six to eight-member Board which will include a chair and assistant chair will visit institutions with bachelor's and master's programs; a seven to nine member Board will visit institutions with post-master's programs. The Board will be trained by the state and will be broadly representative of the education community with at least half of the members representing teacher preparation programs in higher education institutions.

The Virginia Board of Examiners (VBOE) chairs retain the option to modify the template based on their judgements.

Sunday Evening

1) Orientation Session
3:00 -5:30 p.m.

The chair will coordinate the following:

a. Review of Standards - the five categories, all standards, and all compliance criteria.

b. Review "Basic Principles and Assumptions Guiding the Training of Board of Examiners" and re-emphasize the role of judgement in the state review process.

c. Elaboration of sources of data for compliance criteria:

(1) Which criteria may be determined from documents - suggest sources?
(2) Which criteria are most likely to be determined through interview - with whom? what types of questions are appropriate?
(3) which criteria are most likely to be determined through observation?

d. Outline of plans for systematic collection and recording of data - discuss writing style and content. Discuss assignments for writing sections of the report.

e. Scan of the Preconditions Report - familiarize Board with the Preconditions findings and actions by Board of Education. Scan the Annual Data Report.

f. Record on transparencies team member's ratings of the 97 compliance criteria which has been completed prior to the visit.

g. Review of Institutional Report, including determination of incomplete, missing, or inaccurate data.

h. Assignments for the following day. (If previously assigned, be assured that all know their assignments and responsibilities.) Where possible, assign Board members in pairs for data collection.

2) Dinner on Campus or at a Hotel
6:00 - 8:00 p.m.

Attending should include the Board, the campus dean or unit head(s), and other key institutional representatives selected by the unit head(s). (The dinner should be held in a private dining room.)

During the dinner, the following activities should occur:

a. Introductions

b. Overview of the visit - What should the institution expect? What events have been planned?

c. Additional scheduling or information planning needed.

d. Explanation of the purpose of the exit interview by the VBOE chair.

e. Description by the VBOE chair of the expected time schedule for an accreditation decision: team report due to state in 30 days and forwarded immediately to unit head(s) at the institution; unit head(s) must acknowledge receipt of the report and be given an opportunity to comment on it.

Comments must be received by state within one month; the Advisory Board on Teacher Education and Certification will take action within six months of visit.

3) Board Work Session
8:30 - 10:00 p.m.

Each examiner should review his plan for carrying out assignments. The session assures opportunities to:

a. Discuss the planned activities and strategies for the following day and how these activities/strategies contribute to the purpose of the visit.

b. Assign Board members to collect data as appropriate for all program areas included in the professional education unit.

c. Readjust assignments and schedules if necessary.

Monday Morning

8:00 - 9:00 a.m. Board members will review the documents available in the team's workroom.

8:30 - 12:00 noon The chair and one team member will interview the president, vice president/provost for academic affairs, deans of academic support areas (e.g., English, biology). During these interviews the Board will:

a. Review the Board's purpose for being on campus.

b. Solicit information about the status of teacher education on campus.

c. Collect information on governance.

d. Collect comparative data on facilities and resources.

The assistant chair will be available in the team workroom for consultation with team members.

Relevant Compliance Criteria: All Category V Criteria.

Remaining Board members will collect data on Category I, the Knowledge Bases for Professional Education. The investigation will include general education, specialty studies, and professional studies. Included among their activities will be:

a. Examination of course syllabi to determine use of established research, content/essential knowledge, adequacy of objectives, logical and coherent organization.

b. Examination of catalog and other printed documents describing general education, specialty studies, and professional studies to validate and confirm practices described through interviews.

c. Interviews with selected faculty and students to collect data that will help determine whether knowledge bases standards are met.

Relevant Compliance Criteria: All Category I Criteria.

Monday Afternoon

1:00 - 5:00 p.m. Board Team A (3-4 members) will examine Category II, Relationship to the World of Practice standards. Activities will include the following:

a. Interviews with the director of clinical/laboratory experiences to review and confirm policy and practice relevant to admission to student teaching, pre-teaching laboratory/clinical experiences, selection of cooperating schools and teachers, evaluation of student teachers and other relevant policy.

b. Visits to field-based sites.

c. Interviews with school-based supervisors and administrators.

d. Interviews with student teachers.

Relevant Compliance Criteria: All Category II Criteria.

Board Team B (3-4 members--the chair may accompany either Team A or B, depending on perceived need) will examine data on Category III, Students. Activities will include:

a. Interviews with the person(s) in charge of admission to the unit(s).

b. Examination of documents relevant to institutional and teacher education admission policies and criteria, including tests, GPA, and other criteria.

c. Examination of documents relevant to advising and monitoring processes.

d. Interviews with counselors and advisors.

e. Interviews with students to confirm findings.

f. Random checks of student advisee folders, student transcripts, transcripts of recent graduates, and other appropriate student records.

Relevant Compliance Criteria: All Category III Criteria.

Monday Evening

5:00 - 6:00 p.m. — Board members individually update ratings of the compliance criteria found on the "Compliance Criteria: Planning Instrument and Rating Form"

7:00 - 10:00 p.m. — Dinner and team meeting at the hotel. The chair and the Board will review the day's activities. Revised ratings are updated on transparencies used during Monday's session. Discrepancies will be discussed. The team will determine what data needs to be collected on Wednesday to assist in making judgements about whether the standards are met.

Tuesday Morning

8:00 - 12:00 noon — The Board will be divided into two teams of 3-6 members each. The chair may join either team or may work independently to conduct additional investigations or to clarify data.

Note: In addition to assignments described below, Board members should plan to visit classrooms to sample instruction provided by the unit(s).

Board Team C will examine data for Category IV, Faculty. Activities will include:

a. Examination of records in an effort to document faculty qualification, work conditions, and appropriateness of assignments.

b. Interviews with faculty and administrators.

Relevant Compliance Criteria: All Category IV Criteria.

Board Team D will examine date for Category V, Governance and Resources. Activities will include:

a. Examination of documents that describe governance and operation of the unit(s).

b. Examination of minutes of governing groups (e.g., teacher education committee, academic council or senate, graduate council, graduate faculty).

c. Examination of fiscal records (budgets) if the unit(s) and of comparable units - determine equitability between comparable units in the institution.

d. Tour facilities, examine equipment, library, media centers, and other resources. Check the adequacy and condition of all resources.

Relevant Compliance Criteria: All Category V Criteria.

Tuesday Afternoon

1:00 - 5:00 p.m. — Board members will interview appropriate groups as needed to collect additional information. Interviews should be determined by the chair and scheduled for no more than one hour's duration. Depending upon the group interviewed and specialization of the Board, no fewer than two or more than three Board members should be present at each interview.

Groups that might be interviewed

1) The major university policy committee (e.g., academic council or academic senate)

Relevant Compliance Criteria: Selected I Criteria

2) Graduate council or committee

Relevant Compliance Criteria: Selected I, III and IV Criteria

3) Deans and department heads of units providing services to teacher education (e.g., dean of arts and sciences), academic department heads (e.g., departments of English, history, biology)

Relevant Compliance Criteria: All IV Criteria

4) Governing and/or advisory committee(s) for the unit(s)

Relevant Compliance Criteria: All I, II, and III Criteria

5) Cooperating teachers and administrators from nearby schools.

APPENDIX B

Timeline for Conducting
State Approved Program Visits

Twenty Months Prior to Visit:

- Department notifies institution of upcoming visit and negotiates a date for proposed visit
- Department provides materials to prepare for scheduled visit.

Fifteen Months Prior to Visit:

- Institution submits Precondition instruments and documentation, including descriptions of endorsement areas already approved, areas of new endorsement and revisions, to Department of Education
- The Department of Education sends guidelines for preparing Institutional Report to institutions

Fourteen - Eight Months Prior to Visit:

- Department reviews approved endorsements and requests for changes in major or degree requirements
- Department forwards approved endorsements and requests for program revisions and/or new endorsements to appropriate department staff and/or in-state experts in curriculum are for comment
- Department formulates and submits its recommendations on majors, degrees, waivers, program revisions and/or added endorsements to the Advisory Board on Teacher Education and Certification
- Advisory Board on Teacher Education and Certification reviews Department of Education recommendation(s) and renders a decision with respect to scheduling the on-site visit
- Department notifies institution of Advisory Board on Teacher Education and Certification decision
  - The notification will include specific areas to be addressed during the visit, including comments, weaknesses, and issues
  - If the decision is to postpone the visit, specific reasons for postponement will be given and procedures for institution response detailed

Six Months Prior to Visit:

- State team members and chair selected and institution notified
- State sends preconditions report back to college, including any comments or endorsements

Two Months Prior to Visit:

- Institution submits Institutional Report to Department of Education and individual team members

During the Visit:

- Team reviews the institution's compliance with approved program standards
- Team members verify preconditions report of endorsement areas, considering any comments previously attached

Within One Month Following Visit:

- Team chair prepares report and sends to team members
- Team members approve report
- Department receives team report from chair
- Department sends report to institution

Within One Month Following Receipt of Report:

- Institution submits institutional Response/Rejoinder to the Department of Education

Within Six Months Following Visit:

- Advisory Board on Teacher Education and Certification reviews the findings of the visiting team and develops its own recommendation – Approval, Approval With Provisions, Denied* -- regarding program approval.
- Advisory Board on Teacher Education and Certification notifies the institution of its intended recommendation to Board of Education
- Institutions wishing to appeal must do so within 30 days
- Board of Education reviews and takes action on Advisory Board on Teacher Education and Certification recommendations
- Department notifies institution of final Board action

* Refer to "Levels of Program Approval Recommendations" on the next page.

Levels of Program Approval Recommendations:

Approval - Indicates that the institution's unit or program is considered satisfactory, and that graduates will be qualified for licensure in Virginia. Graduates of approved teacher education programs may qualify for licensure in selected states under an interstate reciprocity system.

Approval With Provisions - Indicates that the institution's unit or program can be at an acceptable level, the time to be negotiated between the institution and the Department of Education but not to exceed three years. This qualifies graduates for licensure in Virginia. Graduates of these programs may qualify for licensure in selected states under an interstate reciprocity system.

Denied - Indicates that the institution's unit or program has not met state approved program status and graduates will not qualify for licensure in Virginia through the approved program process.

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Withdrawal of Final Regulation

Title of Regulation: **VR 270-01-0057. Special Education Program Standards.**

REGISTRAR'S NOTICE: The regulation entitled "VR 270-01-0057, Special Education Program Standards" published in the Final Regulation section of The Virginia Register in 9:22 VA.R. 3886-3891 July 26, 1993, is being **TEMPORARILY WITHDRAWN** until the Governor has had an opportunity to comment on the regulation. The regulation will not become effective until after the Governor has commented and the regulation is republished in The Virginia Register. Therefore, the published effective date of August 25, 1993, is incorrect.

DEPARTMENT OF GENERAL SERVICES

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 General 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 330-02-05. Requirements for Approval to Perform Prenatal Serological Tests for Syphilis (REPEALED).**

Statutory Authority: § 32.1-60 of the Code of Virginia.

Effective Date: September 22, 1993.

Summary:

The regulation entitled "Requirements for Approval to Perform Prenatal Serological Tests for Syphilis" is no longer required because the Commonwealth of Virginia statute, § 32.1-60 of the Code of Virginia, was amended by Chapter 364 of the 1993 Acts of Assembly eliminating the requirement to approve laboratories performing prenatal serological tests.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-04-8.7. Client Appeals Regulations.**

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

Effective Date: October 1, 1993.

Summary:

The regulations affected by this action are the Regulations for Client Appeals (VR 460-04-8.7).

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.

Prior to emergency regulations effective October 5, 1992, a decision of a hearing officer was considered a final agency decision. The regulations required further appeal to the Medical Assistance Appeals Panel (the panel) before an appeal to the circuit court could have been taken. Those regulations further provided for benefits to continue while appealing to the panel.

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 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 amendments are intended to address the issues raised in the earlier referenced lawsuit.

The final regulations further amend current regulations by eliminating the requirement that a hearing officer hold a hearing if an appellant objects to an administrative dismissal. Under these regulations, the hearing officer shall issue a decision without an opportunity for a hearing. That decision is a final agency decision and may thereafter be appealed to the panel or the circuit court.

The final regulations delete a provision in the proposed regulations which would have allowed a hearing officer to reconsider his own decision within 10 days if he determines that an error has been made. The Attorney General's office has recommended eliminating the provision altogether concluding that the right to seek reconsideration would erode the 90 days available under federal law to render a final decision. Since the potential problems far outweigh the possible benefits, the provision is being deleted and current regulations, which give the hearing officer no authority to reconsider and require an appeal, will continue.

One private attorney responded to DMAS' Notice of Intended Regulatory Action and commented upon the working draft regulations. Those comments have been incorporated here. There are also minor, technical changes of an editorial nature.

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

Agency Contact: Copies of the regulation may be obtained from Victoria Simmons, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-7933.

VR 460-04-8.7. Client Appeals Regulations.

PART I.
GENERAL.

Article 1.
Definitions.

§ 1.1. Definitions.

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

"Agency" means:

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

2. The department itself ~~when it makes initial determinations regarding client benefits~~ .

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

"Department" means the Department of Medical Assistance Services.

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

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

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

"Panel" means the Medical Assistance Appeals Panel.

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

Article 2.
The Appeal System.

§ 1.2. Division of Client Appeals.

The division ~~shall maintain a two-step~~ *maintains an* appeals system for clients to challenge adverse actions regarding services and benefits provided by the department:

1. Hearing officer review. ~~The first level of appeal is~~ *Appellants shall be entitled to* a hearing before a hearing officer. See Part II of these regulations.

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

§ 1.3. Time limitation for appeals.

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

§ 1.4. Judicial review.

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

Article 3.
Representation.

§ 1.5. Right to representation.

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

§ 1.6. Designation of representative.

A. Agents.

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

B. Attorneys.

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

C. Substitution.

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

D. Revocation.

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

Article 4.
Notice and Appeal Rights.

§ 1.7. Notification of adverse agency action.

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

1. What action the agency intends to take;

2. The reasons for the intended action;

3. The specific regulations that support or the change in law that requires the action;

4. The right to request an evidentiary hearing, and the methods and time limits for doing so;

5. The circumstances under which benefits are continued if a hearing is requested (see § 1.10); and

6. The right to representation.

§ 1.8. Advance notice.

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

§ 1.9. Right to appeal.

An individual has the right to file an appeal when:

1. His application for benefits administered by the department is denied. However, if an application for State Local Hospitalization coverage is denied because of a lack of funds which is confirmed by the hearing officer, ~~and no factual dispute exists,~~ there is no right to appeal.

2. The agency takes action or proposes to take action which will adversely affect, reduce, or terminate his receipt of benefits;

3. His request for a particular medical service is denied, in whole or in part;

4. The agency does not act with reasonable promptness on his application for benefits or request for a particular medical service; or

5. Federal regulations require that a fair hearing be granted.

§ 1.10. Maintaining services.

A. If the agency mails the 10-day notice described in § 1.8 and the appellant files his Request for Appeal before the date of action, his services shall not be terminated or reduced until ~~all appeals have been finally decided,~~ [~~a final decision is issued,~~ *the hearing officer issues a final decision*] unless it is determined at the hearing that the sole issue is one of federal or state law or policy and the appellant is promptly informed in writing that services are to be terminated or reduced pending the [~~hearing~~ *final*] decision.

B. If the agency's action is sustained on appeal, the agency may institute any available recovery procedures against the appellant to recoup the cost of any service furnished to the appellant, to the extent they wei

furnished solely by reason of § 1.10 A of these regulations.

Article 5.
Miscellaneous Provisions.

§ 1.11. Division records.

A. Removal of records.

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

B. Confidentiality of records.

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

C. Fees.

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

D. Waiver of fees.

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

§ 1.12. Computation of time limits.

A. Acceptance of postmark date.

Documents postmarked on or before a time limit's expiration shall be accepted as timely.

B. Computation of time limit.

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

PART II.
HEARING OFFICER REVIEW.

Article 1.
Commencement of Appeals.

~~§ 2.1. Evidentiary hearings.~~

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

~~§ 2.2.~~ *§ 2.1.* Request for appeal.

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

~~§ 2.3.~~ *§ 2.2.* Place of filing a Request for Appeal.

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

~~§ 2.4.~~ *§ 2.3.* Filing date.

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

~~§ 2.5.~~ *§ 2.4.* Time limit for filing.

A Request for Appeal shall be filed within 30 days of the appellant's receipt of the notice of an adverse action described in § ~~1.8~~ *1.7* of these regulations. It is presumed that appellants will receive the notice three days after the agency mails the notice. A Request for Appeal on the grounds that an agency has not acted with reasonable promptness may be filed at any time until the agency has acted.

~~§ 2.6.~~ *§ 2.5.* Extension of time for filing.

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

1. Appellant was seriously ill and was prevented from contacting the division;

2. Appellant did not receive notice of the agency's decision;

3. Appellant sent the Request for Appeal to another government agency in good faith within the time limit;

4. Unusual or unavoidable circumstances prevented a timely filing.

~~§ 2.7.~~ *§ 2.6.* Provision of information.

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

Article ~~5~~ *2*.

Prehearing Review.

§ ~~2.8.~~ *§ 2.7.* Review.

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

§ ~~2.9.~~ *§ 2.8.* Medical Assessment.

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

1. The hearing involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision; and

2. The hearing officer determines it necessary to have an assessment by someone other than the person or team who made the original decision, for example, to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence.

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

§ ~~2.10.~~ *§ 2.9.* Prehearing action.

A. Invalidation.

A Request for Appeal may be invalidated if it was not filed within the time limit imposed by § ~~2.5~~ *§ 2.4* or extended pursuant to § ~~2.6~~ *§ 2.5* .

1. If the hearing officer determines that the appellant has failed to file a timely appeal, the hearing officer shall notify the appellant and the appellant's representative of the opportunity to show good cause for the late appeal.

2. If a factual dispute exists about the timeliness of the Request for Appeal, the hearing officer shall receive evidence or testimony on those matters before taking final action.

3. If the individual filing the appeal is not the appellant or an authorized representative of the appellant under the provisions of § 1.6 A, the appeal shall be determined invalid.

~~3.~~ *4.* If a Request for Appeal is invalidated, the hearing officer shall issue a decision pursuant to § ~~2.22~~ *§ 2.24* .

B. Administrative dismissal.

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

1. If the hearing officer determines that the appellant does not have the right to an appeal, the hearing officer shall *issue a final decision dismissing the appeal and* notify the appellant and appellant's representative of the opportunity to ~~contest the hearing officer's proposed administrative dismissal of the request~~ *appeal to the Medical Assistance Appeals Panel or seek judicial review* .

~~2. If the appellant or the appellant's representative objects to the proposed administrative dismissal, the hearing officer shall conduct a hearing on the matter before taking final action.~~

~~3.~~ *2.* If a Request for Appeal is administratively dismissed, the hearing officer shall issue a decision pursuant to § ~~2.22~~ *§ 2.24* .

C. Judgment on the record.

If the hearing officer determines from the record that the agency's determination was clearly in error and that the case should be resolved in the appellant's favor, he shall issue a decision pursuant to § ~~2.22~~ *§ 2.24* .

D. Remand to agency.

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

E. Removal to the Medical Assistance Appeals Panel.

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

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

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

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

Article ~~7~~ *3*.
Hearing.

§ 2.10. Evidentiary hearings.

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

§ 2.11. Scheduling.

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

§ 2.11:1. Rescheduling.

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

§ 2.12. Notification.

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

§ 2.13. Postponement.

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

§ 2.14. Location.

The hearing location shall be determined by the division. If for medical reasons the appellant is unable to travel, the hearing may be conducted at his residence.

The agency may respond to a series of individual requests for hearings by conducting a single group hearing:

1. Only in cases in which the sole issue involved is one of federal or state law or policy; and

2. Each person must be permitted to present his own case or be represented by his authorized representative.

§ 2.15. Client access to records.

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

§ 2.16. Subpoenas.

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

§ 2.17. Role of the hearing officer.

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

§ 2.18. Informality of hearings.

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

§ 2.19. Evidence.

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

§ 2.20. Record of hearing.

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

§ 2.21. Oath or affirmation.

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

§ 2.22. Dismissal of Request for Appeal.

Request for Appeal may be dismissed if:

1. The appellant or his representative withdraws the request in writing; or

2. The appellant or his representative fails to appear at the scheduled hearing without good cause, and does not reply within 10 days after the hearing officer

mails an inquiry as to whether the appellant wishes further action on the appeal.

§ 2.23. Post-hearing supplementation of the record.

A. Medical assessment.

Following a hearing, a hearing officer may order an independent medical assessment as described in § ~~2.9~~ *§ 2.8* .

B. Additional evidence.

The hearing officer may leave the hearing record opened for a specified period of time in order to receive additional evidence or argument from the appellant. If the record indicates that evidence exists which was not presented by either party, with the appellant's permission, the hearing officer may attempt to secure such evidence.

C. Appellant's right to reconvene hearing or comment.

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

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

§ 2.24. Final decision.

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

1. A description of the procedural development of the case;

2. Findings of fact which identify supporting evidence;

3. Citations to supporting regulations and law;

4. Conclusions and reasoning;

5. The specific action to be taken by the agency to implement the decision; and

6. Notice of further appeal rights to the Medical Assistance Appeals Panel *or state court* . This notice shall include information about the right to representation, time limits for requesting review, the right to submit written argument *;* and the right to present oral argument *;* ~~and the right to receive benefits pending review~~ .

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

§ 2.25. Transmission of the hearing record.

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

[~~*§ 2.26. Reconsideration of hearing officer decision.*~~

~~*On his own motion the hearing officer may reconsider a decision within 10 days of rendering that decision if he determines that an error has been made in the original decision.*~~]

PART III.
MEDICAL ASSISTANCE APPEALS PANEL.

Article 1.
General.

§ 3.1. Composition of the Medical Assistance Appeal Panel.

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

§ 3.2. Function of the panel.

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

Article 2.
Commencement of Panel Review.

§ 3.3. Commencing panel review.

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

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

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

§ 3.5. Time limit for filing.

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

§ 3.6. Extension of time for filing.

An extension of the 12-day period for filing a Request for Review may be granted for good cause shown. A request for an extension shall be in writing and filed with the panel. The request shall include a complete explanation of the reasons that an extension is needed. Good cause includes unusual or unavoidable circumstances which prevented a timely appeal (see § ~~2.6~~ *2.5*).

§ 3.7. Dismissal.

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

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

C. Judgment on the record.

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

Article ~~5~~ *3* .
Written Argument.

§ 3.8. Right to present written argument.

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

§ 3.9. Time limitation.

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

§ 3.10. Extension.

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

§ 3.11. Evidence.

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

Article ~~6~~ *4* .
Oral Argument.

§ 3.12. Requesting oral argument.

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

§ 3.13. Place of hearing.

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

§ 3.14. Notice of hearing.

A. Scheduling the hearing.

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

B. Notification.

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

C. Postponement.

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

§ 3.15. Function of the senior administrative law judge.

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

§ 3.16. Recorded hearing.

The hearing shall be tape recorded.

§ 3.17. Evidence.

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

Article ~~7~~ *5* .
Disposition.

§ 3.18. Disposition.

A. Vote.

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

B. Summary affirmance.

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

C. Content of decisions.

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

D. Remand to hearing officer.

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

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

Article ~~8~~ *6*.
Reconsideration.

§ 3.19. When reconsideration is accorded.

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

§ 3.20. Filing and content.

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

§ 3.21. Review.

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

§ 3.22. Disposition.

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

VA.R. Doc. No. R93-712; Filed July 7, 1993, 11:49 a.m.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-13-01. Rules of the Board and Standards for Water Wells. (REPEALED)**

Statutory Authority: § 62.1-44.92 (Repealed) of the Code of Virginia.

Effective Date: September 22, 1993.

Summary:

On June 10, 1974, the State Water Control Board adopted the regulation entitled Rules of the Board and Standards for Water Wells to implement the legislative requirements of the Ground Water Act of 1973. The 1992 session of the Virginia General Assembly repealed the Ground Water Act of 1973 and enacted the Ground Water Management Act of 1992. The State Water Control Board repeals the Rules of the Board and Standards for Water Wells by this action. Regulations to implement the Ground Water Management Act of 1992 (VR 680-13-07 Ground Water Withdrawal Regulations) are being concurrently promulgated.

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

VA.R. Doc. No. R93-747; Filed August 3, 1993, 3:39 p.m.

* * * * * * * *

Title of Regulation: **VR 680-13-07. Ground Water Withdrawal Regulations.**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Effective Date: September 22, 1993.

Summary:

The Ground Water Management Act of 1992 (Act) authorizes the State Water Control Board to declare ground water management areas and apply corrective controls to conserve, protect and beneficially utilize the ground water resources of the Commonwealth and to ensure the preservation of the public welfare, safety and health. In particular the board is given the duty of adopting such regulations as it deems necessary to administer and enforce the provisions of

the Act and to issue ground water withdrawal permits in accordance with those regulations.

The purpose of this regulation is to administer and enforce the provisions of the Act. This regulation establishes procedures for declaration of ground water management areas, issuance of ground water withdrawal permits to persons who hold certificates of ground water right or permits to withdraw ground water in ground water management areas established under the Ground Water Act of 1973, issuance of ground water withdrawal permits and special exceptions to persons who wish to initiate or expand an existing ground water withdrawal in any ground water management area, and enforcement of the provisions of the Act.

The State Water Control Board will administer this program. The board will issue ground water withdrawal permits to existing holders of certificates of ground water right or permits to withdraw ground water upon receipt of preliminary applications documenting their historical usage of ground water. The board will evaluate applications for ground water withdrawal permits and special exceptions and either issue permits or special exceptions, issue permits or special exceptions with conditions, or deny the application.

The staff reviewed all public comments that were received relative to the proposed regulation and incorporated those comments, to the extent possible, into this regulation. Comments resulted in clarification (additional definitions and reorganization of portions of the regulation), but did not result in significant changes to the intent of the regulation.

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

Agency Contact: Copies of the regulation may be obtained from Cindy Berndt, Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Richmond, VA 23230, telephone (804) 527-5158. There may be a charge for copies.

VR 680-13-07. Ground Water Withdrawal Regulations.

PART I.
GENERAL.

§ 1.1. Definitions.

Unless a different meaning is required by the context, the following terms, as used in this regulation, shall have the following meanings.

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

["Adverse impact" means reductions in ground water levels or changes in ground water quality that limit the ability of any existing ground water user lawfully withdrawing or authorized to withdraw ground water at the time of permit or special exception issuance to continue to withdraw the quantity and quality of ground water required by the existing use. Existing users include all those persons who have been granted a ground water withdrawal permit subject to this regulation and all other persons who are excluded from permit requirements by § 1.5 of this regulation.]

"Applicant" means a person filing an application to initiate or enlarge a ground water withdrawal in a ground water management area.

["Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.]

"Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of ground water, without recycle of said waters to their source of origin.

["Department" means the Department of Environmental Quality.]

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

[~~"Executive~~] "Director" means the [~~executive~~] director of the [~~State Water Control Board~~ Department of Environmental Quality] .

["Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing ground water users. Geophysical investigations include, but are not limited to, pump tests and aquifer tests.]

"Ground water" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates or otherwise occurs.

["Historic prepumping water levels" means ground water levels in aquifers prior to the initiation of any

ground water withdrawals. For the purpose of this regulation, in the Eastern Virginia and Eastern Shore Ground Water Management Areas, historic prepumping water levels are defined as water levels present in aquifers prior to 1890.]

"Human consumptive use" means the withdrawal of ground water for private residential domestic use and that portion of ground water withdrawals in a public water supply system that support residential domestic uses [*and domestic uses at commercial and industrial establishments*] .

[*"Mitigate" means to take actions necessary to assure that all existing ground water users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of ground water needed for existing uses.*]

"Permit" means a Ground Water Withdrawal Permit issued by the board permitting the withdrawal of a specified quantity of ground water under specified conditions in a ground water management area.

"Permittee" means a person who currently has an effective Ground Water Withdrawal Permit issued by the board.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to the board's Procedural Rule No. 1.

[*"Salt water intrusion" means the encroachment of saline waters in any aquifer that create adverse impacts to existing ground water users or is counter to the public interest.*]

"Special exception" means a document issued by the board for withdrawal of ground water in unusual situations where requiring the user to obtain a ground water withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of ground water under specified conditions in a ground water management area.

[*"Surface and ground water conjunctive use system" means an integrated water supply system wherein surface water is the primary source and ground water is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.*]

§ 1.2. Purpose.

The Ground Water Management Act of 1992 recognizes and declares that the right to reasonable control of all ground water resources within the Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ground water resource and to ensure the public welfare, safety and health, provisions for management and control of ground water resources are essential. This regulation delineates the procedures and requirements to be followed when establishing Ground Water Management Areas and the issuance of Ground Water Withdrawal Permits by the board pursuant to the Ground Water Management Act of 1992.

§ 1.3. Authority for regulations.

The authority for this regulation is [~~*pursuant to*~~] *the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia, in particular § 62.1-256.8.*

§ 1.4. Prohibitions and requirements for ground water withdrawals.

A. No person shall withdraw, attempt to withdraw, or allow the withdrawal of ground water within a ground water management area, except as authorized pursuant to a ground water withdrawal permit, or as excluded in § 1.5 of this regulation.

B. No permit or special exception shall be issued for more ground water than can be applied to the proposed beneficial use.

§ 1.5. Exclusions.

The following do not require a ground water withdrawal permit:

1. Withdrawals of less than 300,000 gallons per month.

2. Withdrawals associated with temporary construction dewatering that do not exceed 24 months in duration.

3. Withdrawals associated with a state-approved ground water remediation that do not exceed 60 months in duration.

4. Withdrawals for use by a ground water source heat pump where the discharge is reinjected into the aquifer from which it was withdrawn.

5. Withdrawals from ponds recharged by ground water without mechanical assistance.

6. Withdrawals for the purpose of conducting geophysical investigations, including pump tests.

7. Withdrawals coincident with exploration for and extraction of coal or activities associated with coal

mining regulated by the Department of Mines, Minerals, and Energy.

8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ground water users within a ground water management area.

9. Withdrawals in any area not declared to be a ground water management area.

10. Withdrawal of ground water authorized pursuant to a special exception issued by the board.

[11. Withdrawal of ground water discharged from free flowing springs where the natural flow of the spring has not been increased by any method.]

§ 1.6. Effect of a permit.

A. Compliance with a ground water withdrawal permit constitutes compliance with the permit requirements of the Ground Water Management Act of 1992.

B. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

PART II.
DECLARATION OF GROUND WATER MANAGEMENT AREAS.

§ 2.1. Criteria for consideration of a ground water management area.

The board upon its own motion, or in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ground water management area proceeding, whenever in its judgment there is reason to believe that any one of the four following conditions exist:

1. Ground water levels in the area are declining or are expected to decline excessively.

2. The wells of two or more ground water users within the area are interfering or may be reasonably expected to interfere substantially with one another.

3. The available ground water supply has been or may be overdrawn.

4. The ground water in the area has been or may become polluted.

§ 2.2. Declaration of ground water management areas.

A. If the board finds that any of the conditions listed in § 2.1 exist, and further determines that the public welfare, safety and health require that regulatory efforts be initiated, the board shall declare the area in question a ground water management area, by regulation.

B. Such regulations shall be promulgated in accordance with the Agency's Public Participation Guidelines (VR 680-40-01:1) and the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

C. The regulation shall define the boundaries of the ground water management area, [~~including which~~ and identify the] aquifers [~~included in the area of question are~~ to be] included in the ground water management area. Any number of aquifers that either wholly or partially overlie one another may be included within the same ground water management area.

D. After adoption the board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the ground water management area lies.

PART III.
PERMIT APPLICATION AND ISSUANCE.

§ 3.1. Application for a permit.

A. Persons withdrawing ground water or who have rights to withdraw ground water prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Ground Water Management Areas and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. Any person who was issued a certificate of ground water right or a permit to withdraw ground water prior to July 1, 1991, and who was withdrawing ground water pursuant to said permit or certificate on July 1, 1992, shall file an application on or before December 31, 1992, to continue said withdrawal. [~~Withdrawals claimed shall be documented by~~ The applicant shall demonstrate the claimed prior withdrawals through] withdrawal reports required [~~as~~ by the existing] certificate or permit [~~conditions~~] or by reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

2. Any person who was issued a certificate of ground water right or a permit to withdraw ground water prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit and shall file an application for a ground water withdrawal permit on or before December 31, 1995, to continue said withdrawal. [~~Withdrawals claimed shall be documented by~~ The applicant shall demonstrate the claimed prior withdrawals through] withdrawal reports required [~~as~~ by the existing] certificate or permit [~~conditions~~] or by reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

3. Any person who was issued a permit to withdraw ground water on or after July 1, 1991, and prior to July 1, 1992, shall not be required to apply for a ground water withdrawal permit until the expiration of the permit to withdraw ground water or 10 years from the date of issuance of the permit to withdraw ground water, whichever occurs first. Such persons shall reapply for a ground water withdrawal permit as described in § 3.1 D of this regulation.

4. (Reserved)

5. Any political subdivision, or authority serving a political subdivision, holding a certificate of ground water right or a permit to withdraw ground water issued prior to July 1, 1992, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application on or before December 31, 1992. Any political subdivision, or authority serving a political subdivision, shall submit, as part of the application, a water conservation and management plan as described in § 3.2 B of this regulation.

6. Any person who is required to apply in § 3.1 A 1, § 3.1 A 2, or § 3.1 A 5 and who uses the certificated or permitted withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.

[~~*7. Any person who is withdrawing ground water without a certificate of ground water right or a permit to withdraw ground water shall file an application for a ground water withdrawal permit as described in § 3.1 C of this regulation.*~~]

[~~*8.*~~ *7.*] *Any person described in § 3.1 A 1, § 3.1 A 2, § 3.1 A 3, or § 3.1 A 5 who files* [~~*an*~~ *a complete*] *application by the date required may continue to withdraw ground water pursuant to the existing certificate or permit until such time as the board takes action on the outstanding application for a ground water withdrawal permit. Any person described in § 3.1 A 4 who files an application by the date required may continue their existing withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.*

[*8. Any person described in § 3.1 A 1, § 3.1 A 2, § 3.1 A 3, or § 3.1 A 5 who files an incomplete application by the date required may continue to withdraw ground water as described in § 3.1 A 7 provided that all information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such persons not provide the board the required information within 60 days, they shall cease withdrawals until they provide any additional information to the board and the board concurs that the application is complete.*

9. A complete appplication for those persons decribed in § 3.1 A 1, § 3.1 A 2, § 3.1 A 3, or § 3.1 A 5 shall contain:

a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality.

b. Well construction documentation for all wells associated with the application.

c. Locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps.

d. Withdrawal reports required by the existing certificate or permit, or reports required by Water Withdrawal Reporting Regulations (VR 680-15-01) to support any claimed prior withdrawal.

e. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.

f. Persons described in § 3.1 A 5 shall submit a water conservation and management plan as described in § 3.2.

g. The application shall have an original signature as described in § 3.7 of this regulation.

10. Any person described in § 3.1 A 4 who files an application by the date required may continue their existing withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.]

[~~*9.*~~ *11.*] *Any person described in § 3.1 A 1, § 3.1 A 2, § 3.1 A 3, § 3.1 A 4, or § 3.1 A 5 who fails to file an application by the date required* [~~*abandons*~~ *creates the presumption that*] *all claims to ground water withdrawal based on historic use* [*have been abandoned*] *. Should* [*any such person wish to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within 60 days of the original required date or within 60 days of the effective date of this regulation, whichever is later. Any*] *such* [~~*a*~~] *person* [~~*wish*~~ *failing to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned who wishes*] *to withdraw ground water,* [~~*they must follow the procedures for an application*~~ *shall apply*] *for a new withdrawal as described in § 3.1 C.*

B. Persons withdrawing ground water when a groun water management area is declared or expanded aftei

July 1, 1992, and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. Any person withdrawing ground water in an area that is declared to be a ground water management area after July 1, 1992, shall file an application for a ground water within six months of the effective date of the regulation creating or expanding the ground water management area. [~~Withdrawals claimed shall be documented by~~ The applicant shall demonstrate the claimed prior withdrawals through] withdrawal reports required by Water Withdrawal Reporting Regulations (VR 680-15-01).

2. Any person withdrawing ground water who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.

3. Any person who is required to apply for a ground water withdrawal permit and [~~does so~~ files a complete application] within six months after the effective date of the regulation creating or expanding a ground water management area may continue their withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.

[4. Any person who is required to apply for a ground water withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a ground water management area may continue to withdraw ground water as described in § 3.1 B 3 provided that all information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such persons not provide the board the required information within 60 days, they shall cease withdrawals until they provide any additional information to the board and the board concurs that the application is complete.

5. A complete application for those persons described in § 3.1 B 1 shall contain:

a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality.

b. Well construction documentation for all wells associated with the application.

c. Locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps.

d. Withdrawal reports required by Water Withdrawal Reporting Regulations (VR 680-15-01) to support any claimed prior withdrawal.

e. A copy of the Virginia Department of Health waterworks operation permit, where applicable.

f. The application shall have an original signature as described in § 3.7 of this regulation.]

[~~4.~~ 6.] Any person who fails to file an application within six months after the effective date creating or expanding a ground water management area [~~abandons~~ creates the presumption that] all claims to ground water withdrawal based on historic use [have been abandoned] . Should [any such person wish to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within eight months after the date creating or expanding the ground water management area. Any] such [a] person [~~wish~~ failing to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned who wishes] to withdraw ground water [~~, they must follow the procedures for an application~~ shall apply] for a new withdrawal as described in § 3.1 C.

C. Persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water management area and not excluded from requirements of this regulation by § 1.5 shall apply for a permit.

1. A ground water withdrawal permit application shall be completed and submitted to the board [and a ground water withdrawal permit issued by the board] prior to the initiation of any withdrawal not specifically excluded in § 1.5 of this regulation.

2. A complete ground water withdrawal permit application for a new withdrawal, at a minimum, shall contain the following:

a. A ground water withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required.

b. The application shall include [a ~~Local Government Approval Form that certifies that~~ notification from the local governing body of the county, city or town in which the withdrawal is to occur that] the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia. [If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed

facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this regulation.]

c. The application [~~must~~ shall] have an original signature [~~by a responsible person~~] as described in § 3.7 of this regulation.

d. [The application shall include locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps and] a detailed location map of each existing and proposed well [~~with the latitude, longitude and elevation certified by a licensed professional surveyor, engineer or other qualified person~~] . The [detailed location] map [~~should~~ shall] be of sufficient detail such that [~~the site~~ all wells] may be easily located for site inspection.

e. A completed well construction report for all existing wells [associated with the application] . Well construction report forms will be in a format specified by the board and are available from the [~~State Water Control Board~~ Department of Environmental Quality] .

f. A well construction report of the proposed construction for all proposed wells [included in the application] shall be provided and shall be clearly marked to distinguish them from well construction reports of existing wells. Well construction report forms will be in a format specified by the board and are available from the [~~State Water Control Board~~ Department of Environmental Quality] . Following construction of any proposed wells, well construction reports [~~documenting~~ providing evidence of] the actual construction of the well shall be provided to the board. [Final approval for construction is the authority of the Virginia Department of Health (see § 3.5 A of this regulation)] .

g. An evaluation of the lowest quality water needed for the intended beneficial use.

h. An evaluation of sources of water supply, other than ground water, including sources of reclaimed water.

i. A water conservation and management plan as described in § 3.2 of this regulation.

j. An evaluation to determine the areas of any aquifers that will experience at least one foot of water level declines due to the proposed withdrawal and a listing of all ground water withdrawal permittees within those areas.

3. In addition to requirements contained in § 3.1 C 2, the board may require any or all of the following information prior to considering an application complete.

[~~a. Ground water flow or solute transport modeling or both to determine the area and extent of predicted impacts due to the proposed withdrawal.~~

~~b. An evaluation of the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ground water users or the ground water resource.~~]

[~~c.~~ a.] A [~~mitigation~~] plan to [~~address~~ mitigate] potential adverse impacts due to the proposed withdrawal on existing ground water users [~~or the ground water resource~~] .

[~~d.~~ b.] The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

[~~e.~~ c.] The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

[d. Ground water flow and/or solute transport modeling to determine the area and extent of predicted impacts due to the proposed withdrawal.

e. An evaluation of the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ground water users or the ground water resource.]

f. Other information that the board believes is necessary to evaluate the application.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity which will:

a. Result in an increase of withdrawals [above permitted limits] .

b. Violate or lead to the violation of the terms and conditions of the permit.

3. The [~~board~~ applicant] shall [~~require~~ provide] all information described in §§ 3.1 C 1 and 3.1 C 2 and may [~~require~~ be required to provide] any information described in § 3.1 C 3 for any reapplication.

E. Where [the board considers] an application [~~is considered~~] incomplete [under the requirements of § 3.1 of this regulation] , the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

F. When an application does not [~~appropriately~~ accurately] describe an existing or proposed [ground water] withdrawal [system] , the board may require the applicant to amend [~~an~~ the] existing application, submit a new application, or submit new applications before the application will be processed.

G. All persons required by this regulation to apply for ground water withdrawal permits shall submit application forms in a format specified by the board. Such application forms are available from the [~~State Water Control Board~~ Department of Environmental Quality] . [~~All applications must have an original signature by a responsible person as described in § 3.7 of this regulation.~~]

H. No ground water withdrawal permit application shall be considered complete until a permit fee is submitted as required by the Permit Fee Regulations (VR 680-01-01).

§ 3.2. Water conservation and management plans.

A. Any application to initiate a new withdrawal or expand an existing withdrawal in any ground water management area or the reapplication at the end of a permit cycle for all permits shall require a water conservation and management plan before the application or reapplication is considered complete.

B. A water conservation and management plan shall include:

1. Requirements for the use of water saving plumbing and processes including, where appropriate, the use of water saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code.

2. A water loss reduction program.

3. A water use education program.

4. An evaluation of potential water reuse options.

5. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or [~~executive~~] director including, where appropriate, ordinances prohibiting the waste of water generally [~~: 6~~ and] requirements providing for mandatory water use restrictions, with penalties, during water shortage emergencies.

C. The board shall review all water conservation and management plans and assure that such plans contain all elements required in § 3.2 B. The board shall approve all plans that:

1. Contain requirements that water saving fixtures be used in all new and renovated plumbing as provided in the Uniform Statewide Building Code.

2. Contain requirements for making technological, procedural, or programmatic improvements to the applicant's facilities and processes to decrease water consumption. These requirements shall assure that the most efficient use is made of ground water.

3. Contain requirements for an audit of the total amount of ground water used in the applicant's distribution system and operational processes during the first two years of the permit cycle. Subsequent implementation of a leak detection and repair program will be required within one year of the completion of the audit, when such a program is technologically feasible.

4. Contain requirements for the education of water users and employees [~~of~~ controlling] water consuming processes to assure that water conservation principles are well known by the users of the resource.

5. Contain an evaluation of potential water reuse options and assurances that water will be reused in all instances where reuse is [~~technically~~] feasible.

6. Contain requirements for mandatory water use restrictions during water shortage emergencies that prohibit all nonessential uses such as lawn watering, car washing, and similar nonessential [residential,] industrial and commercial uses for the duration of the water shortage emergency.

7. Contain penalties for failure to comply with mandatory water use restrictions.

§ 3.3. Criteria for issuance of permits.

A. The board shall not issue any permit for more ground water than will be applied to the proposed beneficial use.

B. The board shall issue ground water withdrawal permits to persons withdrawing ground water or who have rights to withdraw ground water prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Ground Water Management Areas and not excluded from requirements of this regulation by § 1.5 based on the following criteria:

1. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 1 for the total amount of ground water withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992.

2. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 2 for the total amount of ground water withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. (Reserved)

4. The board shall issue a ground water withdrawal permit for persons meeting the criteria of § 3.1 A 5 for the amount of ground water withdrawal needed to annually meet human consumption needs as [~~documented~~ proven] in the water conservation and management plan approved by the board. The board shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in §§ 3.1 A 1, 3.1 A 2 and 3.1 A 4 the board shall issue ground water withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. [The applicant shall provide evidence of] withdrawal amounts [~~shall be documented by~~ through] metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

C. The board shall issue ground water withdrawal permits to persons withdrawing ground water when a ground water management area is declared or expanded after July 1, 1992, and not excluded from requirements of this regulation by § 1.5 based on the following criteria:

1. The board shall issue a ground water withdrawal permit to nonagricultural users for the total amount of ground water withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the ground water management area.

2. (Reserved)

3. When requested by the applicant the board shall issue ground water withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. [The applicant shall provide evidence of] withdrawal amounts [~~shall be documented by~~ through] metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The board shall issue ground water withdrawal permits to persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water management area [who have submitted complete applications] and [are] not excluded from requirements of this regulation by § 1.5 based on the following criteria:

[1. The applicant shall provide all information required in § 3.1 C 2 prior to the board's determination that an application is complete. The board may require the applicant to provide any information contained in § 3.1 C 3 prior to considering an application complete based on the anticipated impact of the proposed withdrawal on existing ground water users or the ground water resource.]

[~~1.~~ 2.] When the applicant demonstrates to the board's satisfaction that the maximum safe supply of ground water will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing ground water users or the ground water resource. In order to assure that the applicant's proposed withdrawal complies with the above stated requirements, the applicant's demonstration shall include, but not be limited to, compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are [~~economically~~] viable.

b. The applicant demonstrates that the ground water

withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant [~~and~~ or] that [there are] no existing ground water withdrawers [~~will be impacted by the~~ within the area of impact of the proposed] withdrawal.

[~~d.~~] In cases where the area of impact does not remain on the property owned by the applicant [or existing ground water withdrawers will be included in the area of impact] , the applicant shall provide and implement a [~~mitigation~~] plan to mitigate all adverse impacts on existing ground water users [~~and the ground water resource~~] . Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

(1) The rebuttable presumption that water level declines [~~at~~ that cause adverse impacts to] existing wells within the area of impact are due to the proposed withdrawal.

(2) A commitment by the applicant to mitigate [undisputed] adverse impacts due to the proposed withdrawal in a timely fashion.

(3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant.

[(4) The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.]

[~~e.~~ d.] The applicant demonstrates that the proposed withdrawal [in combination with all existing lawful withdrawals] will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the historical prepumping water levels in the aquifer and the top of the aquifer. Compliance with the 80% drawdown [~~criteria~~ criterion] will be determined at the points that are halfway between the proposed withdrawal site and the predicted one foot drawdown contour based on the predicted stabilized effects of the proposed withdrawal.

[~~f.~~ e.] No pumps or water intake devices are placed below the top of the uppermost confined aquifer [that a well utilizes as a ground water source] or below the bottom of an unconfined aquifer that a well utilizes as a ground water source.

[~~g.~~ f.] The applicant demonstrates that the amount of ground water withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

[~~h.~~ g.] The applicant demonstrates that the proposed ground water withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ground water users or the ground water resource. [This provision shall not exclude the withdrawal of brackish water so long as the proposed withdrawal will not result in unmitigated adverse impacts.]

[~~i.~~ h.] The applicant provides a water conservation and management plan as described in § 3.2 of this regulation and implements the plan as an enforceable condition of the ground water withdrawal permit.

[~~j.~~ i.] The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

[~~2.~~ 3.] The board may also take the following factors into consideration when evaluating a ground water withdrawal permit application or special conditions associated with a ground water withdrawal permit:

a. The nature of the use of the proposed withdrawal.

b. The proposed use of innovative approaches such as aquifer storage and recovery systems, surface and ground water conjunctive use systems, [multiple well systems that blend withdrawals from aquifers that contain different quality ground water in order to produce potable water,] and desalinization of brackish ground water.

c. Climatic cycles.

d. Economic cycles.

e. The unique requirements of nuclear power stations.

f. Population [and water demand] projections during the term of the proposed permit.

g. The status of land use and other necessary approvals.

h. Other factors that the board deems appropriate.

E. When proposed uses of ground water are in conflict or available supplies of ground water are not sufficient to support all those who desire to use them, the board shall prioritize the evaluation of applications in the following manner:

1. Applications for human consumptive use shall be given the highest priority.

2. Should there be conflicts between applications for human consumptive uses, applications will be evaluated in order based on the date that said applications were considered complete.

3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human consumptive uses in order based on the date that said applications were considered complete.

F. Criteria for reissuance of permits.

The board shall consider all criteria for reissuance of a ground water withdrawal permit that are considered for issuance as described in this section of this regulation. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

The board shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the [permitted] withdrawal that was used by said system to support human consumptive uses during 12 consecutive months of the previous term of the permit.

§ 3.4. Public water supplies.

The board shall evaluate all applications for ground water withdrawals for public water supplies as described in § 3.3. The board shall make a preliminary decision on the application and prepare a draft ground water withdrawal permit and forward the draft permit to the Virginia Department of Health. The board shall not issue a final ground water withdrawal permit until such time as the Virginia Department of Health issues a waterworks operation permit, or equivalent. The board shall establish withdrawal limits for such permits as described in § [§] 3.6 A 3 [and 3.6 A 4. Under the Virginia Department of Health's Waterworks Regulation any proposed use of reclaimed, reused, or recycled water contained in a ground water withdrawal application to support a public water supply is required to be approved by the Virginia Department of Health] .

§ 3.5. Conditions applicable to all permits.

A. Duty to comply.

The permittee shall comply with all conditions of the permit. Nothing in these regulations shall be construed to relieve the Ground Water Withdrawal Permit holder of the duty to comply with all applicable federal and state statutes and regulations. At a minimum, a person must obtain a well construction permit [or a well site approval letter] from the Virginia Department of Health prior to the construction of any well. Any permit noncompliance is a violation of the Act and law, and is grounds for enforcement action, permit termination, revocation, amendment, or denial of a permit renewal application.

B. Duty to cease or confine activity.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate.

The permittee shall take all reasonable steps to:

1. Avoid all [~~adverse impacts on the ground water resource or~~] adverse impacts to lawful ground water users which could result from the withdrawal, and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in § 3.3 D [~~1 d~~ 2 c] of this regulation.

D. Inspection and entry.

Upon presentation of credentials, any duly authorized agent of the board [or department] may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions.

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit.

3. Sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information.

The permittee shall furnish to the board, within a reasonable time, any information which the board may request to determine whether cause exists for amending or revoking the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved analytical methods as specified in the permit.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include:

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

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

c. The date the analyses were performed.

d. The name of the individual(s) who performed the analyses.

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used.

f. The results of such analyses.

G. Permit action.

A permit may be amended or revoked as set forth in Part VI of this regulation.

If a permittee files a request for permit amendment or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective permit.

Permits may be amended or revoked upon the request of the permittee, or upon board initiative, to reflect the requirements of any changes in the statutes or regulations.

§ 3.6. Establishing applicable standards, limitations or other permit conditions.

[A. In addition to the conditions established in §§ 3.2, 3.3, 3.4 and 3.5 of this regulation, each permit shall include conditions with the following requirements:

1. A permit shall contain the total depth of each permitted well in feet.

2. A permit shall contain the designation of the acquifer(s) to be utilized.

3. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A permit shall contain a maximum annual withdrawal limit.

4. A ground water withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate ground water withdrawals by public water suppliers if necessary to protect human health or the environment.

5. The permittee shall not place a pump or water intake device lower than the top of the uppermost confined aquifer that a well utilizes as a ground water source or lower than the bottom of an unconfined aquifer that a well utilizes as a ground water source.

6. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ground water withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permits shall contain requirements concerning the proper use, maintenance and installation, when

appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

7. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

8. Ground water withdrawal permits issued under this regulation shall have an effective and expiration date which will determine the life of the permit. Ground water withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by amendment beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

9. Each permit shall have a condition allowing the reopening of the permit for the purpose of amending the conditions of the permit to meet new regulatory standards duly adopted by the board. Cause for reopening permits include but is not limited to a determination that the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit amendment or revocation.

10. Each well that is included in a ground water withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the ground water withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.]

[~~A.~~ B.] In addition to the conditions established in §§ 3.2, 3.3, 3.4 [~~and~~] 3.5 [, and 3.6 A] of this regulation, each permit may include conditions with the following requirements where applicable:

[~~1. A permit may contain the total depth of each permitted well in feet.~~

~~2. A permit may contain the designation of the aquifer(s) to be utilized.~~

~~3. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A withdrawal limit may be placed on all or some of the wells which constitute a withdrawal system. A permit shall contain a maximum annual withdrawal limit and may contain additional withdrawal limits on any frequency as determined by the board.~~

~~4. A ground water withdrawal permit for a public water supply shall contain a maximum permitted daily withdrawal set by the board at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate ground water withdrawals by public water suppliers if necessary to protect human health or the environment.~~

1. A withdrawal limit may be placed on all or some of the wells which constitute a withdrawal system.

2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits based on any other frequency as determined by the board.]

[~~5.~~ 3.] A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the board.

[~~6.~~ 4.] A permit may contain conditions specifying water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality degradation. The board may require permitted users to initiate control measures which include, but are not limited to, the following:

a. Pumping arrangements to reduce ground water withdrawal in areas of concentrated pumping.

b. Location of wells to eliminate or reduce ground water withdrawals near saltwater-freshwater interfaces.

c. Requirement of selective withdrawal from other available aquifers than those presently used.

d. Selective curtailment, reduction or cessation of ground water withdrawals to protect the public welfare, safety or health or to protect the resource.

e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential.

f. Construction and use of observation or monitoring wells, drilled into aquifers between areas of ground water withdrawal (or proposed areas of ground water withdrawal) and sources of lower quality water including saltwater.

g. Prohibiting the hydraulic connection of aquifers that contain different quality waters that could result in deterioration of water quality in an aquifer.

h. Such other necessary control or abatement techniques as are technically feasible.

[~~7.~~ 5.] A permit may contain conditions limiting water level declines in pumping wells and observation wells. [~~At a maximum, water levels shall not be permitted to drop below a point that represents 80% of the distance between the historical prepumping water levels in the confined aquifer and the top of the aquifer. Compliance with the 80% drawdown criteria will be determined at the points that are halfway between the proposed withdrawal site and the one-foot drawdown contour due to the proposed withdrawal when the effects of the withdrawal have stabilized.~~

~~8. The permittee may not place a pump or water intake device lower than the top of the uppermost confined aquifer or lower than the bottom of an unconfined aquifer that a well utilizes as a ground water source.~~

~~9. All permits shall specify monitoring requirements as conditions of the permit.~~

~~a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ground water withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.~~

~~b. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.~~

~~c. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.~~

~~d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.~~

~~10. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.~~]

[~~11.~~ 6.] All permits may include requirements to report water quality and water level information on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

[~~12. Ground water withdrawal permits issued under this regulation shall have an effective and expiration date which will determine the life of the permit. Ground water withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit durations of less than the typical period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by amendment beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.~~

~~13. Each permit shall have a condition allowing the reopening of the permit for the purpose of amending the conditions of the permit to meet new regulatory standards duly adopted by the board. Cause for reopening permits include but is not limited to a determination that the circumstances on which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit amendment or revocation.~~]

[~~B.~~ C.] In addition to conditions described in §§ 3.5 [~~and~~ ,] 3.6 A, [and 3.6 B] the board may issue any permit with any terms, conditions and limitations necessary to protect the public welfare, safety and health.

[~~C. Each well that is included in a ground water withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the State Water Control Board well identification number, the ground water withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the State Water Control Board.~~]

§ 3.7. Signatory requirements.

Any application, report, or certification shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing to the board by a person described in subdivision 1 a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated withdrawal facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: I certify [~~under penalty of law~~] that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

§ 3.8. Draft permit.

A. Upon receipt of a complete application, the board shall make a [tentative] decision to [~~tentatively~~] issue or deny the application. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the permit.

2. Monitoring and reporting requirements.

3. Requirements for mitigation of adverse [~~environmental~~] impacts.

4. Requirements for a water conservation and management plan.

B. If the tentative decision is to deny the application, the board shall do so in accordance with § 6.6 of this regulation.

PART IV.
SPECIAL EXCEPTION APPLICATION AND ISSUANCE.

§ 4.1. Application for a special exception.

A. Any person who wishes to initiate a ground water withdrawal in any ground water management area and is not exempted from the provisions of this regulation by § 1.5 may apply for a special exception in unusual cases where requiring the proposed user to obtain a ground water withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992.

B. A special exception application shall be completed and submitted to the board [and a special exception issued by the board] prior to the initiation of any withdrawal not specifically excluded in § 1.5 of this regulation. Special exception application forms shall be in a format specified by the board and are available from the [State ~~Water Control Board~~ Department of Environmental Quality] .

C. Due to the unique nature of applications for special exceptions the board shall determine the completeness of an application on a case-by-case basis. The board may require any information required in § 3.1 C 2 or § 3.1 C 3 prior to considering an application for a special exception complete.

D. Where [the board considers] an application [~~is considered~~] incomplete, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a special exception application, or submitted incorrect information in a special exception application or in any report to the board, he shall immediately submit such facts or the correct information.

§ 4.2. Water conservation and management plans.

A. The board may require water conservation and management plans [or specific elements of water conservation and management plans] as described in § 3.2 B prior to considering an application for special exception complete.

B. In instances where a water conservation and management plan is required, the board may include the implementation of such plans as an enforceable condition of the applicable special exception.

4.3. Criteria for the issuance of special exceptions.

A. The board shall issue special exceptions only in unusual situations where the applicant demonstrates to the board's satisfaction that requiring the applicant to obtain a ground water withdrawal permit would be contrary to the intended purposes of the Ground Water Management Act of 1992.

B. The board may require compliance with any criteria described in § 3.3 of this regulation.

§ 4.4. Public water supplies.

The board shall not issue special exceptions for the normal operations of public water supplies.

§ 4.5. Conditions applicable to all special exceptions.

The holder of any special exception shall be responsible for compliance with all conditions contained in the special exception and shall be subject to the same requirements of permittees as described in § 3.5 of this regulation.

§ 4.6. Establishing applicable standards, limitations or other special exception conditions.

The board may issue special exceptions which include any requirement for permits as described in § 3.6 of this regulation [; ~~with the exception that special exceptions shall not be renewed~~] . [Special exceptions shall not be renewed, except in the case of special exceptions that have been issued to allow ground water withdrawals associated with state-approved ground water remediation activities. In the case of reissuance of a special exception for a state-approved ground water remediation activity, the board may require the holder of the special exception to submit any information required in § 3.1 C 2 or § 3.1 C 3 and may require compliance with any criteria described in § 3.3 of this regulation.] In the case where [~~the~~ any other] activity that is being supported by the specially excepted withdrawal will require that the withdrawal extend beyond the term of the existing special exception, the ground water user shall apply for a permit to withdraw ground water.

§ 4.7. Signatory requirements.

The signatory requirements for any application, report or certification shall be the same as those described in § 3.7 of this regulation.

§ 4.8. Draft special exception.

A. Upon receipt of a complete application, the board shall make a [tentative] decision to [~~tentatively~~] issue or deny the application. If a tentative decision is to issue the special exception then a draft special exception shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft special exception:

1. Conditions, withdrawal limitations, standards and

other requirements applicable to the special exception.

2. Monitoring and reporting requirements.

3. Requirements for mitigation of adverse [~~environmental~~] impacts.

B. If the tentative decision is to deny the application, the board shall return the application to the applicant. The applicant may then apply for a ground water withdrawal permit for the proposed withdrawal in accordance with Part III of this regulation.

PART V.
PUBLIC INVOLVEMENT.

§ 5.1. Public notice of permit or special exception action and public comment period.

A. Every draft permit and special exception shall be given public notice in a form prescribed by the board and paid for by the owner, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. Notice of each draft permit and special exception will be mailed by the board to each local governing body within the ground water management area within which the proposed withdrawal will occur on or before the date of public notice.

C. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request an informal hearing.

D. The contents of the public notice of a draft permit or draft special exception action shall include:

1. Name and address of the applicant. If the location of the proposed withdrawal differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified.

2. Brief description of the beneficial use that the ground water withdrawal will support.

3. The name and depth below ground surface of the aquifer that will support the proposed withdrawal.

4. The amount of ground water withdrawal requested expressed as an average gallonage per day.

5. A statement of the tentative determination to issue or deny a permit or special exception.

6. A brief description of the final determination procedure.

7. The address and phone number of a specific person at the [~~board's~~ department's] office from whom further information may be obtained.

8. A brief description on how to submit comments and request a public hearing.

E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

F. When a permit or special exception is denied the board will do so in accordance with § [~~6.5~~ 6.6] of this regulation.

§ 5.2. Public access to information.

All information pertaining to permit and special exception application and processing shall be available to the public.

§ 5.3. Public comments and public hearing.

A. All written comments submitted during the 30-day comment period described in § 5.1 C shall be retained by the board and considered during [~~its~~ the board's] final decision on the permit or special exception.

B. The [~~executive~~] director shall consider all written comments and requests for an informal hearing received during the comment period, and shall make a determination on the necessity of an informal hearing in accordance with § 1.12 of Procedural Rule No. 1 (VR 680-31-01). All proceedings, informal hearings and decisions therefrom will be in accordance with Procedural Rule No. 1.

C. Should the [~~executive~~] director, in accordance with Procedural Rule No. 1, determine to dispense with the informal hearing, he may grant the permit or special exception, or, at his discretion, transmit the application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision.

D. Any owner aggrieved by any action of the board taken without a formal hearing may request in writing a formal hearing pursuant to Procedural Rule No. 1.

§ 5.4. Public notice of hearing.

A. Public notice of any informal hearing held pursuant to § 5.3 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the area affected by the proposed withdrawal.

2. Notice of the informal hearing shall be sent to all persons and government agencies which received copy of the public notice of the draft permit o.

special exception and to those persons requesting an informal hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and A 2 of this section [, upon mailing,] at least 30 days in advance of the informal hearing.

C. The content of the public notice of any informal hearing held pursuant to § 5.3 shall include at least the following:

1. Name and address of each person whose application will be considered at the informal hearing [, the amount of ground water withdrawal requested expressed as an average gallonage per day,] and a brief description of the beneficial use that will be supported by the proposed ground water withdrawal.

2. The precise location of the proposed withdrawal and the aquifers that will support the withdrawal. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information.

3. A brief reference to the public notice issued for the permit or special exception application and draft permit or special exception, including identification number and date of issuance unless the public notice includes the informal hearing notice.

4. Information regarding the time and location for the informal hearing.

5. The purpose of the informal hearing.

6. A concise statement of the relevant issues raised by the persons requesting the informal hearing.

7. Contact person and the address of the [~~State Water Control Board~~ Department of Environmental Quality] office at which interested persons may obtain further information or request a copy of the draft permit or special exception [~~prepared pursuant to § 3.5~~] .

8. A brief reference to the rules and procedures to be followed at the informal hearing.

D. Public notice of any formal hearing held pursuant to § 5.3 D shall be in accordance with Procedural Rule No.1.

PART VI.
PERMIT AND SPECIAL EXCEPTION AMENDMENT, REVOCATION AND DENIAL.

§ 6.1. Rules for amendment and revocation.

Permits and special exceptions shall be amended or revoked only as authorized by this part of this regulation as follows:

1. A permit or special exception may be amended in whole or in part, or revoked.

2. Permit or special exception amendments shall not be used to extend the term of a permit or special exception.

3. Amendment or revocation may be initiated by the board, on the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this regulation.

§ 6.2. Causes for revocation.

[A.] After public notice and opportunity for a formal hearing pursuant to § 1.20 of Procedural Rule No. 1 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;

2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this regulation or permit or special exception conditions;

3. The violation of any regulation or order of the board, or any order of a court, pertaining to ground water withdrawal;

4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and can not be regulated to acceptable levels by permit or special exception amendment;

5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special conditions or elimination of any ground water withdrawal controlled by the permit or special exception.

[B. After public notice and opportunity for a formal hearing pursuant to § 1.20 of Procedural Rule No. 1 a permit or special exception can be revoked when any of the developments described in § 6.3 occur and the holder of the permit or special exception agrees to or requests the revocation.]

§ 6.3. Causes for amendment.

A. A permit or special exception may, at the board's discretion, be amended for any cause as described in § 6.2 of this regulation.

B. A permit or special exception may be amended [; ~~but not revoked, except when the holder of the permit or special exception agrees or requests,~~] when any of the

following developments occur:

1. When new information becomes available about the ground water withdrawal covered by the permit or special exception, or the impact of the withdrawal, which was not available at permit or special exception issuance and would have justified the application of different conditions at the time of issuance.

2. When ground water withdrawal reports submitted by the permittee indicate that the permittee is using less than 60% of ~~their~~ the] permitted withdrawal amount [~~on a routine basis~~ for a five-year period] .

3. When a change is made in the regulations on which the permit or special exception was based.

4. When changes occur which are subject to "reopener clauses" in the permit or special exception.

§ 6.4. Transferability of permits and special exceptions.

A. Transfer by amendment.

Except as provided for under automatic transfer in subsection B of this section, a permit or special exception shall be transferred only if the permit has been amended to reflect the transfer.

B. Automatic transfer.

Any permit or special exception shall be automatically transferred to a new owner if:

1. The current owner notifies the board 30 days in advance of the proposed transfer of [~~the title to the ground water withdrawal facility~~ ownership] ;

2. The notice to the board includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit or special exception responsibility, coverage and liability between them; and

3. The board does not within the 30-day time period notify the existing owner and the proposed owner of its intent to amend the permit or special exception.

§ 6.5. Minor amendment.

A. Upon request of the holder of a permit or special exception, or upon board initiative with the consent of the holder of a permit or special exception, minor amendments may be made in the permit or special exception without following the public involvement procedures.

B. For ground water withdrawal permits and special exceptions, minor amendments may only:

1. Correct typographical errors.

2. Require reporting at a greater frequency than required in the permit or special exception.

[3. Add additional or more restrictive monitoring requirements than required in the permit or special exception.

4. Replacing an existing well so long as the replacement well is screened in the same aquifers and is in the same location as the existing well.

5. Combine the withdrawals governed by multiple permits into one permit when the systems that were governed by the multiple permits are physically connected, as long as the interconnection will not result in additional ground water withdrawal and the area of impact will not increase.]

[~~3.~~ 6.] Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date.

[~~4.~~ 7.] Allow for a change in ownership or operational control when the board determines that no other change in the permit or special exception is necessary, provided that a written agreement containing a specific date for transfer of permit or special exception responsibility, coverage and liability from the current to the new owner has been submitted to the board.

§ 6.6. Denial of a permit or special exception.

A. The applicant shall be notified by letter of the [~~staff's~~ department's] decision to recommend to the board denial of the permit or special exception requested.

B. The [~~staff~~ department] shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation; withdraw his application; or proceed with the processing on the original application.

C. Should the applicant withdraw his application, no permit or special exception will be issued.

D. Should the applicant elect to proceed with the original project, the staff shall make its recommendation of denial to the [~~executive~~] director for determination of the need for public notice [~~of a formal hearing to consider the denial as provided for in accordance with Procedural Rule No. 1~~ as provided for in Part V of this regulation] .

PART VII.
ENFORCEMENT.

§ 7.1. Enforcement.

The board may enforce the provisions of this regulation utilizing all applicable procedures under the Ground Water Management Act of 1992 or any other section of the Code of Virginia that may be applicable.

PART VIII.
MISCELLANEOUS.

§ 8.1. Delegation of authority.

The [~~executive~~] director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-256.9 of the Code of Virginia.

§ 8.2. Control of naturally flowing wells.

The owner of any well that naturally flows, in any portion of the Commonwealth, shall either:

1. Permanently abandon the well in accordance with the Virginia Department of Health's Private Well Construction Regulations; or

2. Equip the well with valves that will completely stop the flow of ground water when it is not being applied to a beneficial use.

§ 8.3. Statewide information requirements.

The board may require any person withdrawing ground water for any purpose anywhere in the Commonwealth, whether or not declared to be a ground water management area, to furnish to the board such information that may be necessary to carry out the provisions of the Ground Water Management Act of 1992. Ground water withdrawals that occur in conjunction with activities related to the exploration and production of oil, gas, coal, or other minerals regulated by the Department of Mines, Minerals and Energy are exempt from any information reporting requirements.

§ 8.4. Statewide right to inspection and entry.

Upon presentation of credentials the board, or any duly authorized agent, shall have the power to enter, at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, located anywhere in the Commonwealth for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which [~~it~~ the board or department] may adopt, issue or establish to carry out the provisions of the Ground Water Management Act of 1992 and this regulation.

VA.R. Doc. No. R93-748; Filed August 3, 1993, 3:39 p.m.

* * * * * * * * *

Title of Regulation: **VR 680-14-12. Facility and Aboveground Storage Tank Registration Requirements.**

Statutory Authority: § 62.1-44.34:19.1 and 62.1-44.15(10) of the Code of Virginia.

Effective Date: September 22, 1993.

Summary:

In accordance with § 62.1-44.34:19.1 of the Code of Virginia, the State Water Control Board promulgated regulations requiring all facility operators in the Commonwealth of Virginia having an aggregate aboveground maximum storage of more than 1,320 gallons of oil or an individual aboveground storage tank with a capacity of more than 660 gallons of oil to register the facility and provide an inventory of aboveground storage tanks at the facility. Registration must be made to the board and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.

The purpose of this regulation is to provide guidance for operators of facilities in the Commonwealth to register the facility and the aboveground storage tanks located at the facility. Facilities and aboveground storage tanks must be registered within 90 days of the effective date of this regulation. Registration shall be renewed every five years or whenever title to a facility or an aboveground storage tank is transferred, whichever first occurs.

In accordance with § 62.1-44.34:19.1 of the Code of Virginia, the State Water Control Board is authorized to assess a fee, according to a schedule based on the size and type of facility or tank, not to exceed $100 per facility or $50 per tank. This regulation establishes a schedule of fees for this registration.

Changes in the final regulation can be found in the definition section (a definition for "Department" was added), the applicability section, and the registration section (notification information was revised to improve clarity).

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

Agency Contact: Copies of the regulation may be obtained from Cindy Berndt, Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5158. There may be a charge for copies.

VR 680-14-12. Facility and Aboveground Storage Tank Registration Requirements Regulations.

§ 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 or coordinator of emergency services" means any person or any coordinator appointed pursuant to § 44-146.18 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.*

"Operator" means any person who owns, operates, charters by demise, rents [,] *or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.*

"Person" means any firm, corporation, association or partnership, one or more individuals, or any governmental unit [,] *or agency thereof.*

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations [,] *and fabricated assemblies therein, and breakout tanks.*

"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. The term does not include the capacity of any AST* [~~*which*~~ *that*] *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 as concrete, steel [,] *or plastic,* [~~*which provide*~~ *that provides*] *structural support. This* [~~*terms*~~ *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 transportation 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.

§ 2. Applicability.

A. This regulation applies to (i) an operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil, or (ii) an operator having [~~*an*~~ *any*] *individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil.*

B. The requirements of this regulation do not apply to:

1. Operators of tank vessels or vehicles;

2. An operator of:

a. An AST containing petroleum, including crude oil or any fraction thereof, which is subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section [~~*101(a)*~~ *101(14)*] *of the Comprehensive Environmental Response, Compensation, and Liability Act* [*(CERCLA),*] *(42 U.S.C. § 9601);*

[*b. Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the Clean Water Act;*]

[~~*b.*~~ *c.*] *An AST* [~~*which*~~ *that*] *is regulated by the Department of Mines, Minerals and Energy under* [*Chapter 22.1 of*] *Title 45.1 of the Code of Virginia;*

[~~c.~~ d.] An AST used for the storage of products [~~which~~ that] are regulated pursuant to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.);

[~~d.~~ e.] An AST [~~which~~ that] 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;

[~~e.~~ f.] An AST with a storage capacity of [~~less than~~] 660 gallons [~~which~~ or less that] is used for [~~storage~~ storing] heating oil for consumption on the premises where stored;

[~~f.~~ g.] An AST [~~which~~ that] is used to store propane gas;

[~~g.~~ h.] An AST of 660 gallons or less located at a farm or residence [~~which~~ that] is used for storing motor fuel for noncommercial purposes or for storing substances that are used to facilitate the production of crops, livestock, and livestock products on a farm;

[~~h.~~ i.] An AST used to store nonpetroleum hydrocarbon based animal and vegetable oils;

[~~i.~~ j.] A nonstationary AST liquid trap or associated gathering lines directly related to oil and gas production or gathering;

[~~j.~~ k.] A drum, barrel [,] or portable AST that has a storage capacity of less than 110 gallons;

[~~k.~~ l.] A surface impoundment, pit, pond [,] or lagoon;

~~l.~~ m.] A stormwater or wastewater collection system; [~~and~~]

[~~m.~~ n.] Equipment or machinery that contains oil for operational purposes [: ; and]

[o. 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 including response related training and drills.]

§ 3. Compliance dates.

A. Within 90 days of the effective date of these regulations, the operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or an operator having any individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register the facility or the AST with the [~~board~~ department] and the local director of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia, and provide an inventory of all ASTs.

B. The operator of a facility or the operator of an individual AST shall renew the registration required by this regulation either every five years or whenever title to a facility or AST is transferred, whichever occurs first.

§ 4. Statement of purpose.

The purpose of this regulation is to establish requirements for registration of facilities and individual ASTs located within the Commonwealth to provide the [~~board~~ department] with the information necessary to identify and inventory facilities with a storage capacity of more than 1,320 gallons of oil or individual ASTs with a storage capacity of more than 660 gallons of oil.

§ 5. Registration.

A. An operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or an operator having any individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register all ASTs located in the Commonwealth with the [~~board~~ department] and the local director of emergency services within 90 days of the effective date of this regulation. For any registration [or notification] submitted pursuant to this section, an operator shall [~~submit to the board the form prescribed in Appendix I of this regulation~~ complete the form(s) prescribed by the department for registration and submit it to the department] .

B. In addition to the initial registration required by § 5 A, an operator [~~of~~ a shall register a new or converted] facility or [~~an~~] AST [~~shall~~ with the department and local director of emergency services] within 30 days after [: being brought into use] .

[~~1. A new or converted facility or AST has been brought into operation, register the facility or the AST with the board and the local director of emergency services.~~

~~2. The upgrade, repair, replacement, or temporary or permanent closure of an existing AST or installation of a new AST, notify the board of such upgrade, repair, replacement, closure or installation.~~]

[C. Notification.

An operator or a facility or AST shall notify the department within 30 days after any AST:

1. Upgrade;

2. Repair;

3. Replacement;

4. Temporary closure; and

5. Permanent closure.]

§ 6. Installing, retrofitting [,] or bringing an AST into use.

[~~A. This section applies to operators of facilities with a total storage capacity of less than 25,000 gallons of oil when installing, retrofitting or bringing a regulated AST into use after the effective date of this regulation.~~]

[~~B. A regulated AST~~ An AST subject to this regulation] , including an AST operated by the federal government, shall not be registered without proof that the operator has obtained the required permit, inspections [,] and Certification of Use from the local building official, except in the case of a regulated 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.

§ 7. Aboveground storage tank closure.

Closure of any aboveground storage tank subject to this regulation shall be accomplished in accordance with the requirements of § 8 of VR 680-14-13, Aboveground Storage Tank Pollution Prevention Requirements.

§ 8. Administrative fees.

A. This section establishes application fees for registration of aboveground storage tanks. Fees shall be paid by check, draft [,] or postal money order made payable to the [~~State Water Control Board~~ Department of Environmental Quality] .

B. An operator of an AST subject to this regulation shall submit [~~an~~ a] fee of $25 to the [~~board~~ department] for each AST up to a maximum of $50 per facility. An operator of multiple facilities shall submit a [maximum] fee of $100 to the [~~board~~ department] to register all of [~~the~~ their] facilities and ASTs.

C. Fees shall be submitted as part of the [~~initial~~] registration and upon each registration renewal of the facility or AST. Registration forms will not be accepted by the [~~board~~ department] as complete unless the applicable fee has been paid by the operator.

§ 9. Notices to the [~~State Water Control Board~~ Department of Environmental Quality] .

All requirements of this regulation for registration or notification to the [~~State Water Control Board~~ Department of Environmental Quality] shall be addressed as follows:

Mailing Address:

[~~State Water Control Board~~ Department of Environmental Quality - Water]
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]
Office of Spill Response and Remediation
4900 Cox Road
Glen Allen, VA 23060

§ 10. Delegation of authority.

The [~~executive~~] director, or a designee, may perform any act of the board under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

[~~APPENDIX I~~
~~REGISTRATION OF ABOVEGROUND STORAGE TANKS~~

~~State Water Control Board~~ ..... ~~State use only~~

~~P.O. Box 11143~~ ..... ~~ID Number~~ : : : :

~~Richmond, VA 23230~~ ..... ~~Date Received~~ : : : :

~~Please type or print in ink all items except signature in certification section.~~

~~General Information~~

~~An operator of a facility or an operator of an individual AST shall register all AST located within the Commonwealth with the board and the local director or coordinator of emergency services within 90 days of the effective date of this regulation as required by § 62.1-44.34:19.1 of the Code of Virginia.~~

~~The primary purpose of this registration is to identify and inventory the aboveground oil storage tanks containing oil located in the Commonwealth. It is expected that the information you provide will be based on available records, or in the absence of available records, to the best your knowledge, belief or recollection.~~

~~WHO MUST NOTIFY?~~

~~A. Section 62.1-44.34:19.1 of the Code of Virginia requires that the operator of a facility located within the Commonwealth with an aboveground storage capacity of more than 1,320 gallons of oil or with an individual aboveground storage tank located within the Commonwealth with a storage capacity of more than 660 gallons of oil shall register their facilities and provide an inventory of aboveground storage tanks at the facility. An operator means any person who owns, operates, charters, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.~~

~~WHICH AST's MUST BE REGISTERED?~~

~~Aboveground storage tanks 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 includes any tank or device used to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel or plastic which provide structural support. This term does not include (i) line pipe and breakout tanks of an interstate pipeline regulated under the Hazardous Liquid Pipeline Safety Act of 1979, or (ii) flow through process equipment used in processing or treating oil by physical, biological, or chemical means.~~

~~WHAT AST's ARE EXEMPT FROM THE REGISTRATION REQUIREMENTS?~~

~~The requirements of this regulation do not apply to:~~

~~1. Operators of tank vessels or vehicles;~~

~~2. An operator of:~~

~~a. An AST containing petroleum, including crude oil or any fraction thereof, which is subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601);~~

~~b. An AST which is regulated by the Department of Mines, Minerals and Energy under Title 45.1 of the Code of Virginia;~~

~~c. An AST used for the storage of products which are regulated pursuant to the Federal Food, Drug, and Cosmetic Act (21 USC § 301 et seq.);~~

~~d. 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 waste and other regulated substances;~~

~~e. An AST with a storage capacity of less than 660 gallons which is used for storing heating oil for consumption on the premises where stored;~~

~~f. An AST which is used to store propane gas;~~

~~g. An AST of 660 gallons or less located at a farm or residence which is used for storing motor fuel for noncommercial purposes or for storing substances that are used to facilitate the production of crops, livestock, and livestock products on a farm;~~

~~h. An AST used to store nonpetroleum based animal and vegetable oils;~~

~~i. A nonstationary AST liquid trap or associated gathering lines directly related to oil and gas production or gathering;~~

~~j. A drum, barrel or portable AST that has a storage capacity of less than 110 gallons;~~

~~k. A surface impoundment, pit, pond, or lagoon;~~

~~l. A stormwater or wastewater collection system; and~~

~~m. Equipment or machinery that contains oil for operational purposes.~~

~~WHAT OILS ARE COVERED?~~

~~"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.~~

~~WHEN TO REGISTER~~

~~A. An operator of a facility or an operator of an individual AST shall register all AST's located within the Commonwealth with the board and the local director or coordinator of emergency services within 90 days of the effective date of this regulation.~~

~~For any registration submitted pursuant to this § 5, an operator shall submit to the board the form prescribed in Appendix I of this regulation.~~

~~B. In addition to the initial registration required by § 5 A, an operator of a facility or an AST shall within 30 days after:~~

~~1. A new facility or AST has been brought into operation, register the facility or AST with the board and local director or coordinator of emergency services.~~

~~2. The upgrade, repair, replacement, or temporary or permanent closure of an existing AST or installation of a new AST, notify the board of such upgrade, repair, replacement, closure or installation.~~

~~I. Facility Operator~~

~~Operator Name~~

~~Street Address~~

~~City State Zip~~

~~County~~

~~Phone Number (Area Code)~~

~~II. Facility Address~~

~~Latitude Longitude~~

~~Street Address~~

~~City State Zip~~

~~County~~

~~Phone Number (Area Code)~~

III. Type of Operator

___ Federal Government ___ State Government

___ Local Government ___ Private

___ Commercial

IV. Type of Facility

___ Petroleum Distributor ___ Refinery

___ Airline ___ Bulk Storage

___ Federal Government ___ State Government

___ Local Government ___ Commercial

___ Industrial ___ Railroad

___ Other (Explain)

V. Contact Person in Charge of Tanks

.....

Name Position Address and Phone Number

VI. AST SECONDARY CONTAINMENT

If applicable, provide a brief description of the method of secondary containment utilized for the AST(s).

_ _

_ _

_ _

VII. Type of Leak Detection Utilized (If applicable)

___ Groundwater Monitoring ___ Vapor monitoring

___ Interstitial Monitoring ___ Other (Describe)

IX. AST Closure

Tank No. ____ closed Date Closed ____

Tank No. ____ closed Date Closed ____

Tank No. ____ closed Date Closed ____

Tank No. ____ closed Date Closed ____

Tank No. ____ closed Date Closed ____

Results of Closure Assessment

_ _

_ _

____ Evidence of a discharge detected? (Yes/No)

____ If a discharge was detected, was it reported to the Board?

X. Certification (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete. (To be signed by either the operator or the operator's authorized representative.)

Name and title of operator . . . Signature . . . Date Signed
authorized representative
Name and title of operator's . . . Signature . . . Date Signed
authorized representative

VA.R. Doc. No. R93-749; Filed August 3, 1993, 3:39 p.m.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ-E - Rule 8-5, Federal Operating Permit for Stationary Sources).**

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

Effective Dates: June 28, 1993, through June 27, 1994.

Preamble:

Title V of the Clean Air Act (the Act) as amended November 1990 provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the U.S. Environmental Protection Agency (EPA) is required to develop regulations with specific operating permit requirements. The federal regulations (40 CFR Part 70) were promulgated in final form on July 21, 1992. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations. These programs are due to EPA for review by November 15, 1993.

The State Air Pollution Control Board decided to comply with the federal and state requirements by promulgating two regulations, one governing the establishment of the permit program and the second governing the fees to fund the program. The emergency regulation governing the establishment of the operating permit program is the subject of this preamble.

In conformance with the Administrative Process Act's mandated procedures for regulatory development, the board issued a notice of intended regulatory action, held a public meeting, solicited public comment, and used an ad hoc advisory group in the development of this regulation. The process used has been extensive and comprehensive. The result of this process forms the basis for the emergency regulation on the operating permit program.

As a result of legislation passed by the 1993 General Assembly amending the Administrative Process Act, the Office of the Attorney General has ruled that all regulations not adopted before July 1, 1993, must begin a new cycle of regulatory development. Therefore, development of the operating permit regulation cannot continue. Virginia must, however, promulgate and submit an applicable regulation to the U.S. Environmental Protection Agency by November 15, 1993, or else face the threat of federal sanctions, which include loss of highway construction funds statewide. Therefore, an emergency regulation must be promulgated.

Summary:

The proposed regulation establishes an operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder and the department all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations. The key provisions of the regulation are described below.

1. The principal sources subject to the proposal are major sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, lead, and hazardous air pollutants. Sources that are not defined as major under federal regulation are deferred from obtaining a permit for five years.

2. The applicant is responsible for identifying all federal and state requirements applicable to the source and for describing emissions of all regulated pollutants from emissions units at the source. The department is responsible for verifying this information and setting terms and conditions in the permit concerning the applicable requirements.

3. The permit will provide a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable. The permit shield specifies that a source is not in violation of its permit as long as it is in compliance with the permit terms and conditions.

4. The proposal provides public and affected state review of the draft permit developed by the department. A public hearing can be held either at the department's or the public's request if the department finds that there is a significant air quality issue pertinent to the draft permit. After review of the comments and the development of a proposed final permit, the proposed permit must be sent to EPA. EPA has 45 days during which it can object to the permit. This review process is limited to initial permits, renewal permits, reopened permits and significant permit modifications.

5. The proposal provides several mechanisms to modify the permit: administrative permit amendments, minor permit modifications and significant permit modifications. Administrative permit amendments cover only administrative changes to the permit such as correction of typographical errors, name changes or changes in ownership. Minor permit modifications cover a limited number of operational or emissions changes that occur at the source and that do not require reanalysis of permit terms or conditions, such as a case-by-case determination of an emissions limitation. Significant permit modifications are those modifications that do not require a new source review permit but that do require significant change and reanalysis of the permit to establish the new permit

term or condition.

6. The proposal provides operational flexibility for the source through several mechanisms: (i) writing alternative operating scenarios in the permit, (ii) through various emissions trading options, (iii) through changes to the permit (on-permit change) that do not exceed emissions allowed under the permit and do not violate applicable requirements, and (iv) through changes not addressed by the permit (off-permit change) that do not violate applicable requirements or any permit term or condition.

7. The proposal authorizes the department to develop general permits for numerous similar sources that have the same operations and processes and emit the same or similar pollutants. The sources cannot be subject to case-by-case determinations under the regulations in order to qualify for this permit category. Once the department proposes a general permit, it must be made available for public, affected state and EPA review. However, the issuance of a general permit to an individual source is not subject to public participation.

Terms of the Order:

This emergency regulation (attached and identified by title above) shall be enforced under applicable statutes and shall remain in full force and effect for one full year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The State Air Pollution Control Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered

BY:

/s/ Richard N. Burton
Director, Department of Environmental Quality
Date: June 25, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 22, 1993

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Date: June 28, 1993

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ-E - Rule 8-5, Federal Operating Permit for Stationary Sources).

PART VIII
FEDERAL OPERATING PERMITS FOR STATIONARY SOURCES
(RULE 8-5)

§ 120-08-0501. Applicability.

A. Except as provided in subsection C and E of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to the provisions of Parts IV and V as adopted pursuant to section 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to the provisions of Part VI as adopted pursuant to section 112 of the federal Clean Air Act.

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

C. The provisions of this rule shall not apply to the following:

1. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Rule 5-5.

2. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), section 61.145 (Standard for Demolition and Renovation), as prescribed in Rule 6-1.

3. Any source that would be subject to this rule solely because it is subject to regulations or requirements concerning prevention of accidental releases under section 112(r) of the federal Clean Air Act.

4. Insignificant activities and levels within a stationary source subject to this rule are as follows, except to the extent covered under § 120-08-0505 L:

a. Emissions units.

(1) Gas flares or flares used solely to indicate danger to the public.

(2) Combustion units designed and used exclusively for comfort heating that use liquid petroleum gas or natural gas as fuel.

(3) Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

(4) Indoor or outdoor kerosene heaters.

(5) Space heaters operating by direct heat transfer.

(6) Repairs or maintenance where no structural repairs are made and where no new or permanent facilities are installed.

(7) Safety devices, if associated with a permitted emissions source.

(8) Air contaminant detectors or recorders, combustion controllers or shutoffs.

(9) Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

(10) Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

(11) Any consumer product used in the same manner as in normal consumer use, provided the use results in a duration and frequency of exposure which are not greater than those experienced by consumers, and which may include, but not be limited to, personal use items, janitorial cleaning supplies, office supplies and supplies to maintain copying equipment.

(12) Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption.

(13) Portable generators.

(14) Firefighting equipment and the equipment used to train firefighters.

b. Emission levels for emissions units other than those listed in subsection C 4 a of this section.

(1) Emissions units with uncontrolled emissions of 1 ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM10), or volatile organic compounds.

(2) Emissions units with uncontrolled emissions of 10 tons per year or less of carbon monoxide.

(3) Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.

(4) Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established by title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any emissions unit that is determined to be shutdown under the provisions of § 120-08-0514.

D. Deferral from initial applicability.

1. Sources not deferred from initial applicability.

The following sources shall not be deferred from the obligation to obtain a permit under this rule:

a. Major sources.

b. Solid waste incineration units subject to the provisions of Parts IV and V as adopted pursuant to section 129 (e) of the federal Clean Air Act.

2. Sources deferred from initial applicability.

Area sources subject to a standard, limitation, or other requirement under Parts IV, V or VI shall be deferred from the obligation to obtain a permit under this rule. The decision to require a permit for these sources shall be made at the time that the new standard is promulgated and shall be incorporated into Parts IV, V or VI along with the listing of the new standard.

3. Any source deferred under subsection D 2 of this section may apply for a permit. The board may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of the rule.

E. Affected sources subject to the requirements of the acid rain program under 40 CFR Parts 72, 73, 75, 77 and 78 are exempt from the provisions of this rule but are subject to the provisions of Rule 8-7.

F. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this rule by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

§ 120-08-0502. Definitions.

A. 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 subsection C of this section.

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

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the source actually emitted a pollutant during the consecutive five-year period which precedes the particular date and which is representative of normal source operation. The board may allow the use of a different historical time period upon a determination that it is more representative of normal source operation. Actual emissions may be calculated according to a method acceptable to the board and may use the source's actual operating hours, production rates, in-place control equipment and types of materials processed, stored, or combusted during the selected time period.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in the State Implementation Plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to §§ 120-08-01, 120-08-02, or 120-08-03 or of any operating permit issued pursuant to § 120-08-04, except for terms or conditions derived from applicable state requirements.

c. Any standard or other requirement prescribed under these regulations, particularly the provisions of Parts IV, V or VI, adopted pursuant to requirements of the federal Clean Air Act.

d. Any requirement concerning accident prevention under section 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to these regulations, with the exception of applicable state requirements.

f. Any standard or other requirement for consumer and commercial products under section 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under section 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this rule.

j. With regard to temporary sources subject to § 120-08-0509, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in § 120-08-02.

"Applicable requirement" means any applicable federal requirement or applicable state requirement.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in Rules 4-2, 4-3, 5-2, or 5-3.

b. Any term or condition of any fuel variance issued pursuant to § 120-02-05 B.

c. Any ambient air quality standard prescribed under § 120-03-02.

d. Any standard or other requirement prescribed under these regulations, other than Rules 4-40 and 4-41, not qualifying as an applicable federal requirement.

e. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state and federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

a. Applicable emission standards.

b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

c. Any other applicable emission limitation, including those with a future compliance date.

"Area source" means any stationary source that is not a major source. For purposes of this rule, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to §§ 120-08-0504 and 120-08-0505 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Draft permit" means the version of a permit for which the board offers public participation under § 120-08-0523 or affected state review under § 120-08-0525.

"Emissions allowable under the permit" means a federally or state enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including the following:

a. Requirements in Parts IV, V or VI adopted pursuant to the provisions of section 111 or section 112 of the federal Clean Air Act;

b. Requirements adopted by the board and approved by the administrator into the State Implementation Plan;

c. Any permit requirements established pursuant to (i) 40 CFR 52.21 or (ii) Part VIII, with the exception of terms and conditions established to address applicable state requirements; and

d. Any other applicable federal requirement.

"Final permit" means the version of a permit issued by the board under this rule that has completed all review procedures required by §§ 120- 08-0523 and 120-08-0525.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

"General permit" means a permit issued under this rule that meets the requirements of § 120-08-0508.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable, which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, and which is designated as such in Appendix U.

"Locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Major source" means

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

15) Carbon black plants (furnace process).

16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants.

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) All other stationary source categories subject to the provisions of Rule 5-5 or Rule 6-1, but only with respect to those air pollutants that are regulated for that category.

c. For ozone nonattainment areas, any source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under section 182(f) of the federal Clean Air Act (NOX requirements for ozone nonattainment areas) do not apply.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or predicted emissions data.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this rule that is issued, renewed, amended, or revised pursuant to this rule.

"Permit modification" means a revision to a permit issued under this rule that meets the requirements of § 120-08-0517 on minor permit modifications, § 120-08-0518 on group processing of minor permit modifications, or § 120-08-0519 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of §§ 120-08-0517, 120-08-0518 or 120-08-0519 or any administrative permit amendment that meets the requirements of § 120-08-0516.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with § 120-08-0525.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant subject to any standard promulgated

under Parts IV or V as adopted pursuant to the requirements of section 111 of the federal Clean Air Act.

d. Any Class I or II substance subject to a standard promulgated under or established by title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under section 112 of the federal Clean Air Act concerning hazardous air pollutants and listed in Appendix U.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

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

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

"State enforceable" means all limitations and conditions which are enforceable by the board, including those requirements developed pursuant to § 120-02-11, requirements within any applicable order or variance, and any permit requirements established pursuant to Part VIII.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see Appendix M).

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established and which is designated as such in Appendix V. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties.

§ 120-08-0503. General.

A. Regardless of any other provision of this rule, no permit may be issued pursuant to this rule until the rule has been approved by the administrator, whether full, interim, partial or otherwise.

B. No provision of these regulations, other than subsection A of this section, shall limit the power of the board to issue an operating permit pursuant to this rule in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare or to remedy a nonattainment condition or both.

C. The board may combine the requirements of and the permit for a source subject to § 120-08-04 with the requirements of and the permit for a source subject to this rule.

§ 120-08-0504. Applications.

A. A single application is required identifying each emission unit subject to this rule. The application shall be submitted according to the requirements of this section, § 120-08-0505 and procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this rule.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. Timely application.

1. The owner of a stationary source applying for a permit for the first time shall submit an application within 12 months after the source becomes subject to

this rule, except that stationary sources not deferred under § 120-08-0501 D shall submit their applications between September 15, 1994 and November 15, 1995 on a schedule to be determined by the department. A notice of the availability of the list of sources or source categories required to file applications shall be published by January 15, 1994.

2. New source review.

a. The owner of a source subject to the requirements of section 112(g)(2) (construction, reconstruction or modification of sources of hazardous air pollutants) of the federal Clean Air Act or to the provisions of §§ 120-08-01, 120-08-02, or 120-08-03 shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this rule would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation.

b. The owner of a source may file a complete application to obtain the permit or permit revision under this rule on the same date the permit application is submitted under the requirements of section 112(g)(2) of the federal Clean Air Act or under §§ 120-08-01, 120-08-02, or 120-08-03.

3. For purposes of permit renewal, the owner shall submit an application at least six months prior to the date of permit expiration.

D. Complete application.

1. To be determined complete, an application shall contain all information required pursuant to § 120-08-0505.

2. Applications for permit revision or for permit reopening shall supply information required under § 120-08-0505 only if the information is related to the proposed change.

3. Within 45 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under §§ 120-08-01, 120-08-02, or 120-08-03.

E. Duty to supplement or correct application.

1. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

2. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. Application shield.

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this rule until the board takes final action on the application under § 120-08-0511.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this rule.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either §§ 120-08-0517 F or 120-08-0518 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this rule until the board takes final action on the application under § 120-08-0511.

4. If the source notifies the board that it wants to make an on-permit change under § 120-08-0524 A, the failure of the source to have a permit modification or operation of the source without a permit modification for the on-permit change shall not be a violation of this rule unless the board notifies the source that the change is not an on-permit change as specified in § 120-08-0524 A 1.

5. If an applicant submits a timely and complete application under this section for a permit renewal but

the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to § 120-08-0510, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subsections F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

G. Signatory and certification requirements.

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this rule shall be signed by a responsible official.

2. Any person signing a document required to be submitted to the board under this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating 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."

§ 120-08-0505. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information.

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

D. Emissions-related information.

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except for insignificant activities and levels exempted under § 120-08-0501 C 4. Emissions shall be calculated for uncontrolled, potential or actual emissions as required by the board. Fugitive emissions shall be included in the permit application regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Rule 8-6 as required by the board. Identification and description of all points of emissions described in subsection D 1 of this section in sufficient detail to establish the basis for fees and applicability of requirements of these regulations and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under § 120-04-02 I or § 120-05-02 H).

8. Calculations on which the information in subsections D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any information or analysis that the board deems necessary to review the air quality impact of the source.

E. Air pollution control requirements.

1. Citation and description of all applicable requirements.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information.

1. Other specific information that may be necessary to implement and enforce other requirements of these regulations and the federal Clean Air Act or to determine the applicability of such requirements.

2. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to § 120-08-0507 J or to define permit terms and conditions implementing operational flexibility under § 120-08-0524.

I. Compliance plan.

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

J. Compliance certification.

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under section 112 (r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. For insignificant activities or levels which are exempted under § 120-08-0501 C 4 because of size or production rate, a list of such insignificant activities or levels must be included in the application.

M. An application shall not omit information needed to

determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the schedule approved pursuant to Rule 8-6.

§ 120-08-0506. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this rule for the following reasons:

1. When the applicant requests that a cap be established.

2. When the board determines that the source emitting at allowable levels under these regulations results or will result in a violation of an ambient air quality standard.

3. When the board determines it necessary to correct a nonattainment condition.

B. The criteria in subsections B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in these regulations prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this rule.

2. A permit issued under this rule may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in these regulations prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. An emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsections B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to §§ 120-08-01, 120-08-02 or 120-08-03, as appropriate.

§ 120-08-0507. Permit content.

A. General.

1. For major sources subject to this rule, the board shall include in the permit all applicable requirements for all emissions units in the major source not exempted as an insignificant activity by § 120-08-0501 C 4.

2. For any source other than a major source subject to this rule, the board shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this rule.

3. Fugitive emissions shall be included in the permit regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this rule shall include, but not be limited to, the elements listed in subsections B through N of this section.

B. Emission limitations and standards.

Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. If applicable requirements contained in these regulations allow a determination of an alternative emission limit at a source, equivalent to that contained in these regulations, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and

based on replicable procedures.

2. Provisions relating to emission limitations and standards as follows:

a. The source shall operate without causing a violation of the applicable provisions of these regulations.

b. The source shall not cause or contribute to a violation of any applicable ambient air quality standard.

c. The source shall operate in conformance with any applicable control strategy, including any emissions standards or limitations in the State Implementation Plan in effect at the time that a complete application is submitted so as not to prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard.

3. Review and determination of compliance with Rule 4-3 and Rule 5-3 concerning toxic pollutants. If the review under Rule 4-3 or Rule 5-3 has not been completed for all toxic pollutants, the permit may be issued if the permit contains a schedule for the source to submit emissions information sufficient to allow the board to evaluate the toxic pollutants emitted by the source. The schedule may include deferral of review under Rule 4-3 or Rule 5-3 until the first or second renewal of the permit issued under this rule but shall not extend beyond the second renewal. If the source is subject to the provisions of an emissions standard or requirement (i) in Parts V or VI adopted pursuant to section 112(d) of the federal Clean Air Act or (ii) established by the board pursuant to sections 112(g) or 112(j) of the federal Clean Air Act, the review under Rule 4-3 or Rule 5-3 shall be completed for the toxic pollutant subject to the standard or requirement before a permit may be issued under this rule.

C. Equipment specifications and operating parameters.

Each permit shall contain terms and conditions setting out the following requirements with respect to equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

3. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved.

D. Duration.

Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of 5 years.

E. Monitoring.

Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 504(b) or 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subsection F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subsection E 2 of this section.

3. As necessary, requirements concerning the use maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting.

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the

date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 120-08-0504 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Enforcement.

Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. 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.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in § 120-08-0507 L, §§ 120-08-0520 and 120-08-0522. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Permit fees.

Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Rule 8-6.

I. Emissions trading.

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that these regulations provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in § 120-08-0510 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this rule.

J. Alternative operating scenarios.

Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the

scenario under which it is operating.

2. The permit shield described in § 120-08-0510 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this rule.

K. Compliance.

Each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of § 120-08-0504 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with § 120-08-0505 I.

4. Progress reports consistent with an applicable schedule of compliance and § 120-08-0505 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following:

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The compliance status.

(3) Whether compliance was continuous or intermittent.

(4) Consistent with subsection E of this section, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.

(5) Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

e. Such additional requirements as may be specified pursuant to sections 114(a)(3) and 504(b) of the federal Clean Air Act.

6. Such other provisions as the board may require.

L. Reopening.

Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened if additional applicable requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than th

date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 120-08-0504 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

M. Miscellaneous.

The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with these regulations, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability.

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subsection N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of § 120-08-0525 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board may include as federally enforceable any provisions of the regulations that have been submitted to the administrator for review to be approved under the State Implementation Plan and that have not yet been approved.

§ 120-08-0508. General permits.

A. Requirements for board issuance of a general permit.

1. The board may issue a general permit covering a source category containing numerous similar sources that meet the following criteria:

a. All sources in the category shall be generally the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Sources shall not be subject to case-by-case standards or requirements.

c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Any general permit shall comply with all requirements applicable to other permits issued under this rule.

3. General permits shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.

4. The board shall not issue a general permit until the requirements concerning notice and opportunity for public participation under § 120-08-0523 and affected state and EPA review under § 120-08-0525 have been met. However, requirements concerning content of the notice shall replace those specified in § 120-08-0523 C and shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit.

b. The criteria to be used in determining which sources qualify for the general permit.

c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.

d. A statement of the estimated impact of the activity covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit.

f. A brief description of the comment procedures required by § 120-08-0523.

g. A brief description of the procedures to be used to request a hearing as required by § 120-08-0523 or the time and place of the public hearing if the board determines to hold a hearing under § 120-08-0523 E 9.

B. Application for a general permit.

1. Sources that would qualify for a general permit shall apply to the board for coverage under the terms of the general permit.

2. The application shall meet the requirements of this

rule and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. Issuance of a general permit.

1. The board shall provide coverage under the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of an individual permit shall not require compliance with the public participation procedures under § 120-08-0523 and affected state and EPA review under § 120-08-0525.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued an individual permit, letter or certification.

5. Provided the individual permit, letter or certification is located at the source, the source shall not be required to have a copy of the general permit. However, a copy of the general permit shall be retained by the board or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement

1. In spite of the permit shield provisions in § 120-08-0510, the source shall be subject to enforcement action under § 120-08-0522 for operation without a permit issued under this rule if the source is later determined by the board not to qualify for the conditions and terms of the general permit.

2. Granting or denying a source's request for authorization to operate under a general permit shall not be a final permit action for purposes of judicial review.

§ 120-08-0509. Temporary sources.

A. The board may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.

2. A condition that the owner shall notify the board not less than 15 days in advance of each change in location.

3. Conditions that ensure compliance with all other provisions of this rule.

§ 120-08-0510. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any applicable requirement specifically identified as being not applicable to the source provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this rule shall alter or affect the following:

1. The provisions of section 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability of the administrator to obtain information from a source pursuant to section 114 of the federal Clean Air Act (inspections, monitoring, and entry) or the board pursuant to § 10.1-1315 of the Virginia Air Pollution Control Law.

§ 120-08-0511. Action on permit application.

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 120-08-0508.

2. Except for modifications qualifying for minor permit modification procedures under §§ 120-08-0517 or 120-08-0518, the board has complied with the requirements for public participation under § 120-08-0523.

3. Except for minor permit modification procedures under §§ 120-08-0517 or 120-08-0518, the board has complied with the requirements for notifying and responding to affected states under § 120-08-0525.

4. The conditions of the permit provide for compliance with all applicable requirements and the requirements of this rule.

5. The administrator has received a copy of the proposed permit and any notices required under §§ 120-08-0525 A and 120-08-0525 B and has not objected to issuance of the permit under § 120-08-0525 C within the time period specified therein.

B. The board shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after an application is determined by the board to be complete, with the following exceptions:

1. For sources not deferred under § 120-08-0501 D, one-third of the initial permits shall be issued in each of the three years following the administrator's approval of this rule.

2. For permit revisions, as required by the provisions of §§ 120-08-0516, 120-08-0517, 120-08-0518 or 120-08-0519.

C. Issuance of permits under this rule shall not take precedence over or interfere with the issuance of preconstruction permits under §§ 120-08-01, 120-08-02, or 120-08-03.

D. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The board shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

§ 120-08-0512. Transfer of permits.

A. No person shall transfer a permit from one location to another, unless authorized under § 120-08-0509, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

§ 120-08-0513. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this rule.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with § 120-08-0504.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under section 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

§ 120-08-0514. Permanent shutdown for emissions trading.

A. The shutdown of an emissions unit is not creditable for purposes of emissions trading unless a decision concerning shutdown has been made pursuant to the pertinent provisions of Part VIII, including subsections B through D of this section.

B. Upon a final decision by the board that an emissions unit is shut down permanently, the board shall revoke any applicable permit by written notification to the owner and remove the unit from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the unit shall not commence operation without a permit being issued under the applicable new source review and operating permit provisions of Part VIII.

C. The final decision shall be rendered as follows:

1. Upon a determination that the emissions unit has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the unit is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent, a projected date for restart-up of the emissions unit and a request for a formal hearing if the owner wishes to exercise that

right.

2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested. If no hearing is requested, the decision to consider the shutdown permanent shall become final.

D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that an emissions unit is shutdown permanently prior to any final decision rendered under subsection C of this section.

§ 120-08-0515. Changes to permits.

A. Changes to a permit issued under this rule and during its five-year term may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

B. Changes initiated by the permittee.

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in § 120-08-0516 through § 120-08-0519.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. Changes by the board.

The board may initiate a change to a permit through the use of permit reopenings as specified in § 120-08-0520.

D. Permit term.

1. Changes to permits shall not be used to extend the term of the permit.

2. At the request of the applicant, the permit may be reopened under § 120-08-0520 and a new permit with a new permit term may be issued.

§ 120-08-0516. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical errors.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of § 120-08-0512 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under §§ 120-08-01, 120-08-02, and 120-08-03 when §§ 120-08-01, 120-08-02, and 120-08-03 meet (i) procedural requirements substantially equivalent to the requirements of §§ 120-08-0523 and 120-08-0525 that would be applicable to the change if it were subject to review as a significant permit modification, and (ii) compliance requirements substantially equivalent to those contained in § 120-08-0507.

B. Administrative permit amendment procedures.

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under §§ 120-08-0523 and 120-08-0525, except as provided in § 120-08-0523 A 2. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board, upon taking final action granting a request for an administrative permit amendment, shall allow coverage by the permit shield in § 120-08-0510 for amendments made pursuant to subsection A 5 of this section when §§ 120-08-01, 120-08-02 and 120-08-03 meet the relevant requirements of § 120-08-0507 concerning compliance and of §§ 120-08-0523 and 120-08-0525 concerning public participation and EPA and affected state review.

§ 120-08-0517. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existi

monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a modification under §§ 120-08-01, 120-08-02, 120-08-03 or section 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under §§ 120-08-01, 120-08-02, 120-08-03 or under section 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant modification under § 120-08-0519 or as an administrative permit amendment under § 120-08-0516.

B. Notwithstanding subsection A of this section and § 120-08-0518 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in these regulations.

C. Application.

An application requesting the use of minor permit modification procedures shall meet the requirements of § 120-08-0505 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with § 120-08-0504 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

4. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

D. Public participation and EPA and affected state notification.

1. Within five working days of receipt of a complete permit modification application, the board shall meet its obligation under § 120-08-0525 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under § 120-08-0525 B 2 to the administrator.

2. The public participation requirements of § 120-08-0523 shall not extend to minor permit modifications except as provided in § 120-08-0523 A 2.

E. Timetable for issuance.

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under § 120-08-0525 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be revlewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by § 120-08-0525 A.

F. Ability of owner to make change.

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subsection F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable

requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subsection F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. Permit shield.

The permit shield under § 120-08-0510 shall not extend to minor permit modifications.

§ 120-08-0518. Group processing of minor permit modifications.

A. Criteria.

Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under § 120-08-0517 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in § 120-08-0502, or five tons per year, whichever is least.

B. Application.

An application requesting the use of group processing procedures shall meet the requirements of § 120-08-0505 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with § 120-08-0504 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subsection A 2 of this section.

5. Certification, consistent with § 120-08-0504 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

C. Public participation and EPA and affected state notification.

1. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subsection A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under § 120-08-0525 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under § 120-08-0525 B 2 to the administrator.

2. The public participation requirements of § 120-08-0523 shall not extend to group processing of minor permit modifications except as provided in § 120-08-0523 A 2.

D. Timetable for issuance.

The provisions of § 120-08-0517 E shall apply t modifications eligible for group processing, except that the board shall take one of the actions specified in § 120-08-0517 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under § 120-08-0525 C, whichever is later.

E. Ability of owner to make change.

The provisions of § 120-08-0517 F shall apply to modifications eligible for group processing.

F. Permit shield.

The permit shield under § 120-08-0510 shall not extend to minor permit modifications.

§ 120-08-0519. Significant modification procedures.

A. Criteria.

1. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under §§ 120-08-0517 or 120-08-0518 or as administrative amendments under § 120-08-0516.

2. Significant modification procedures shall be used for those permit modifications that:

a. Involve significant changes to existing monitorin reporting, or recordkeeping requirements in th

permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under Parts IV, V or VI, or a visibility or increment analysis carried out under Part VIII of these regulations.

c. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) A federally enforceable emissions cap assumed to avoid classification as a modification under §§ 120-08-01, 120-08-02, 120-08-03 or section 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. Application.

An application for a significant permit modification shall meet the requirements of §§ 120-08-0504 and 120-08-0505 for permit issuance and renewal and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

C. EPA and affected state notification.

The provisions of § 120-08-0525 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. Timetable for issuance.

The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

E. Ability of owner to make change.

The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection D of this section.

F. Permit shield.

The provisions of § 120-08-0510 shall apply to changes made under this section.

G. Public participation.

The provisions of § 120-08-0523 shall apply to applications made under this section.

§ 120-08-0520. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in § 120-08-0507 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. Reopenings for cause by EPA.

1. In accordance with the federal Clean Air Act, if the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit, the administrator may notify the board and the permittee of such finding in writing.

2. The board shall review the administrator's findings and, within 90 days after receipt of such notification, respond appropriately to the administrator as set forth in the federal Clean Air Act. The administrator may extend this 90-day period for an additional 90 days if necessary.

3. The administrator may review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection.

5. If the board fails to submit a proposed determination pursuant to subsection D 2 of this section or fails to resolve any objection pursuant to subsection D 4 of this section, the board recognizes that the administrator may take certain actions in accordance with the federal Clean Air Act.

§ 120-08-0521. Malfunction.

A. Effect of a malfunction.

A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

B. Affirmative defense of malfunction.

The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

4. The permittee submitted to the board by the deadlines established in subsections B 4 a and B 4 b of this section a notice and written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of § 120-08-0507 F 2 b to report promptly deviations from permit requirements.

a. A notice of the malfunction by facsimile transmission, telephone or telegraph no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction.

b. A written statement describing the malfunction no later than seven business days following the day the malfunction occurred.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

§ 120-08-0522. Enforcement.

A. General.

1. Pursuant to § 10.1-1322, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this rule.

c. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that a complete application is submitted.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subsection A 2 of this section or for any other violations of these regulations.

B. Penalties.

An owner who violates or fails, neglects or refuses to obey any provision of this rule or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the enforcement provisions of the Virginia Air Pollution Control Law.

C. Appeals.

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Requests for formal hearing regarding any decision of the board under subsection C 1 of this section may be made in accordance with § 120-02-09.

3. Appeal from any final decision of the board under subsections C 1 and C 2 of this section may be taken in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law.

D. The existence of a permit under this rule shall constitute a defense of a violation of any applicable provision of the Virginia Air Pollution Control Law or these regulations if the permit contains a condition providing the permit shield as specified in § 120-08-0510 and if the requirements of § 120-08-0510 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this rule shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or these regulations and shall not

relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. Inspections and right of entry.

1. The executive director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and § 120-02-30, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this rule.

2. The executive director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. Other enforcement mechanisms.

The board may enforce permits issued under this rule through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in §§ 120-02-02, 120-02-03 and 120-02-04 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

§ 120-08-0523. Public participation.

A. Required public comment and public notice.

1. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

2. The board shall provide periodic notification no less frequently than semi-annually to persons on a permit mailing list who have requested such information on applications for and board decisions on any of the following:

a. Minor permit modifications.

b. Administrative permit amendments.

c. On-permit changes.

d. Off-permit changes.

B. Notification.

1. The board shall notify the public of the draft permit by advertisement in at least one local newspaper of general circulation in the locality particularly affected and to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

2. For major sources subject to this rule, the notice shall be mailed to the chief elected official and chief administrative officer and the planning district commission for the locality particularly affected.

C. Content of the public notice and availability of information.

1. The notice shall include but not be limited to the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. A statement of estimated local impact of the activity for which the permit is sought, including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used.

g. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the permit draft, the application, air quality impact information if an ambient air dispersion

analysis was performed and all relevant supporting materials, including the compliance plan.

h. A brief description of the comment procedures required by this section.

i. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subsection E 9 of this section.

2. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the draft permit, shall be available for public inspection during the entire public comment period at the regional office.

D. Affected states review.

The board shall provide such notice and opportunity for participation by affected states as is provided for by § 120-08-0525.

E. Opportunity for public hearing.

1. The board shall provide an opportunity for a public hearing as described in subsections E 2 through E 6 of this section.

2. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the draft permit. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative.

c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed during the 30 days following the appearance of the public comment notice in the newspaper and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds the following:

a. There is significant public interest in the air quality issues raised by the permit application in question.

b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subsection E 4 of this section.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subsections E 1 through E 6 of this section, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subsection E 3 a and b of this section pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit will provide sufficient time for more than one draft permit to be heard.

9. Written comments shall be accepted by the board for at least fifteen days after the hearing.

F. Public comment record.

1. The board shall keep two records of public participation as follows:

a. A record of the commenters.

b. A record of the issues raised during the public participation process so that the administrator may fulfill his obligation under section 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted.

2. Such records shall be made available to the public upon request.

§ 120-08-0524. Operational flexibility.

The board shall allow, under conditions specified in this section, a change at a source that does not require a revision to be made to the permit in order for the change to occur. Such changes shall be designated as either on-permit changes, those that contravene an express permit term, or off-permit changes, those that are not addressed or prohibited by the permit. The conditions under which the board shall allow on-permit changes to be made are specified in subsections A through C of this section. The conditions under which the board shall allow off-permit changes to be made are specified in subsection D of this section.

A. On-permit changes - general.

1. The board shall allow a change at a stationary source that changes a permit condition with the exception of the following:

a. A modification under §§ 120-08-01, 120-08-02 or 120-08-03.

b. A modification under the provisions of or regulations promulgated pursuant to 112 of the federal Clean Air Act.

c. A change that would exceed the emissions allowable under the permit.

d. A change that would violate applicable requirements.

e. A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

2. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

3. The permit shield under § 120-08-0510 shall not extend to any change made pursuant to subsection A of this section.

B. On-permit changes - emission trades within stationary sources provided for in the State Implementation Plan.

1. With the exception of the changes listed in subsection A 1 of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where these regulations or the State Implementation Plan provides for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

2. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in these regulations or the State Implementation Plan authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of these regulations or the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the regulations or State Implementation Plan and which provide for the emissions trade.

3. The permit shield described in § 120-08-0510 shall not extend to any change made under subsection B of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of these regulations and the State Implementation Plan.

C. On-permit changes - emission trades within stationary sources to comply with an emissions cap in the permit.

1. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under § 120-08-0507 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in his application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

2. The board shall not allow an on-permit change to be made under subsection C of this section if it is a change listed in subsection A 1 of this section.

3. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the

permit.

4. The permit shield under § 120-08-0510 shall extend to terms and conditions that allow such increases and decreases in emissions.

D. Off-permit changes.

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the following requirements:

a. Modifications under §§ 120-08-01, 120-08-02 or 120-08-03.

b. Modifications under § 112 of the federal Clean Air Act or the regulations promulgated under § 112.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes that qualify as insignificant under § 120-08-0501 C 4. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under § 120-08-0510.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

§ 120-08-0525. Permit review by EPA and affected states.

A. Transmission of information to the administrator.

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this rule.

2. The board shall keep for five years such records and submit to the administrator such information as he may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. Review by affected states.

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under § 120-08-0523, except to the extent that § 120-08-0517 or § 120-08-0518 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under §§ 120-08-0517 or 120-08-0518), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable requirements or the requirements of this rule.

C. EPA objections in accordance with the federal Clean Air Act.

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subsection C 1 of this section should include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator should provide the permit applicant a copy of the objection.

3. The board recognizes that, in accordance with the federal Clean Air Act, failure of the board to do any of the following also may constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in § 120-08-0523 except for minor permit modifications.

4. The board recognizes that if, within 90 days after the date of an objection under subsection C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator may take other actions in accordance with the federal Clean Air Act.

D. Public petitions to the administrator.

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 120-08-0523, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subsection A 1 of this section, the board shall take appropriate action to resolve the objection, in accordance the federal Clean Air Act. A petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subsection A 1 of this section, the administrator may take appropriate actions in accordance with the federal Clean Air Act, and the board may thereafter issue a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. Prohibition on default issuance.

No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

APPENDIX U
HAZARDOUS AIR POLLUTANTS

I. General.

A. Section II designates hazardous air pollutants for the purposes of Rules 8-5 and 8-6.

B. The number to the left of each chemical name in section II of this appendix is the Chemical Abstract Service (CAS) number for that substance. Chemical names not indicating a unique substance have not been assigned CAS numbers (compounds, coke oven emissions, glycol ethers, fine mineral fibers, polycyclic organic matter, and radionuclides). The definitions of glycol ethers and all chemical compounds (unless otherwise specified) include any unique substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of the structure of that substance.

II. List of hazardous air pollutants.

75070 Acetaldehyde

60355 Acetamide

75058 Acetonitrile

98862 Acetophenone

53963 2-Acetylaminofluorene

107028 Acrolein

79061 Acrylamide

79107 Acrylic acid

107131 Acrylonitrile

107051 Allyl chloride

92671 4-Aminobiphenyl

62533 Aniline

90040 o-Anisidine

1332214 Asbestos

71432 Benzene (including benzene from gasoline)

92875 Benzidine

98077 Benzotrichloride

100447 Benzyl chloride

92524 Biphenyl

117817 Bis(2-ethylhexyl)phthalate (DEHP)

542881 Bis(chloromethyl)ether

75252 Bromoform

106990 1,3-Butadiene

156627 Calcium cyanamide

105602 Caprolactam

133062 Captan

63252 Carbaryl

75150 Carbon disulfide

56235 Carbon tetrachloride

463581 Carbonyl sulfide

120809 Catechol

133904 Chloramben

57749 Chlordane

7782505 Chlorine

79118 Chloroacetic acid

532274 2-Chloroacetophenone

108907 Chlorobenzene

510156 Chlorobenzilate

67663 Chloroform

107302 Chloromethyl methyl ether

126998 Chloroprene

1319773 Cresols/Cresylic acid (isomers and mixture)

95487 o-Cresol

108394 m-Cresol

106445 p-Cresol

98828 Cumene

94757 2,4-D, salts and esters

3547044 DDE

334883 Diazomethane

132649 Dibenzofurans

96128 1,2-Dibromo-3-chloropropane

84742 Dibutylphthalate

106467 1,4-Dichlorobenzene(p)

91941 3,3-Dichlorobenzidene

111444 Dichloroethyl ether (Bis(2-chloroethyl)ether)

542756 1,3-Dichloropropene

62737 Dichlorvos

111422 Diethanolamine

121697 N,N-Diethyl aniline (N,N-Dimethylaniline)

64675 Diethyl sulfate

119904 3,3-Dimethoxybenzidine

60117 Dimethyl aminoazobenzene

119937 3,3'-Dimethyl benzidine

79447 Dimethyl carbamoyl chloride

68122 Dimethyl formamide

57147 1,1-Dimethyl hydrazine

131113 Dimethyl phthalate

77781 Dimethyl sulfate

534521 4,6-Dinitro-o-cresol, and salts

51285 2,4-Dinitrophenol

121142 2,4-Dinitrotoluene

123911 1,4-Dioxane (1,4-Diethyleneoxide)

122667 1,2-Diphenylhydrazine

106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)

106887 1,2-Epoxybutane

140885 Ethyl acrylate

100414 Ethyl benzene

51796 Ethyl carbamate (Urethane)

75003 Ethyl chloride (Chloroethane)

106934 Ethylene dibromide (Dibromoethane)

107062 Ethylene dichloride (1,2-Dichloroethane)

107211 Ethylene glycol

151564 Ethylene imine (Aziridine)

75218 Ethylene oxide

96457 Ethylene thiourea

75343 Ethylidene dichloride (1,1-Dichloroethane)

50000 Formaldehyde

76448 Heptachlor

118741 Hexachlorobenzene

87683 Hexachlorobutadiene

77474 Hexachlorocyclopentadiene

67721 Hexachloroethane

822060 Hexamethylene-1,6-diisocyanate

680319 Hexamethylphosphoramide

110543 Hexane

302012 Hydrazine

7647010 Hydrochloric acid

7664393 Hydrogen fluoride (hydrofluoric acid)

7783064 Hydrogen sulfide

123319 Hydroquinone

78591 Isophorone

58899 Lindane (all isomers)

108316 Maleic anhydride

67561 Methanol

72435 Methoxychlor

74839 Methyl bromide (Bromomethane)

74873 Methyl chloride (Chloromethane)

71556 Methyl chloroform (1,1,1-Trichloroethane)

78933 Methyl ethyl ketone (2-Butanone)

60344 Methyl hydrazine

74884 Methyl iodide (Iodomethane)

108101 Methyl isobutyl ketone (Hexone)

624839 Methyl isocyanate

80626 Methyl methacrylate

1634044 Methyl tert butyl ether

101144 4,4-Methylene bis(2-chloroaniline)

75092 Methylene chloride (Dichloromethane)

101688 Methylene diphenyl diisocyanate (MDI)

101779 4,4'-Methylenedianiline

91203 Naphthalene

98953 Nitrobenzene

92933 4-Nitrobiphenyl

100027 4-Nitrophenol

79469 2-Nitropropane

684935 N-Nitroso-N-methylurea

62759 N-Nitrosodimethylamine

59892 N-Nitrosomorpholine

56382 Parathion

82688 Pentachloronitrobenzene (Quintobenzene)

87865 Pentachlorophenol

108952 Phenol

106503 p-Phenylenediamine

75445 Phosgene

7803512 Phosphine

7723140 Phosphorus

85449 Phthalic anhydride

1336363 Polychlorinated biphenyls (Aroclors)

1120714 1,3-Propane sultone

57578 beta-Propiolactone

123386 Propionaldehyde

114261 Propoxur (Baygon)

78875 Propylene dichloride (1,2-Dichloropropane)

75569 Propylene oxide

75558 1,2-Propylenimine (2-Methyl aziridine)

91225 Quinoline

106514 Quinone

100425 Styrene

96093 Styrene oxide

1746016 2,3,7,8-Tetrachlorodibenzo-p-dioxin

79345 1,1,2,2-Tetrachloroethane

127184 Tetrachloroethylene (Perchloroethylene)

7550450 Titanium tetrachloride

108883 Toluene

95807 2,4-Toluene diamine

584849 2,4-Toluene diisocyanate

95534 0-Toluidine

8001352 Toxaphene (chlorinated camphene)

120821 1,2,4-Trichlorobenzene

79005 1,1,2-Trichloroethane

79016 Trichloroethylene

95954 2,4,5-Trichlorophenol

88062 2,4,6-Trichlorophenol

121448 Triethylamine

1582098 Trifluralin

540841 2,2,4-Trimethylpentane

108054 Vinyl acetate

593602 Vinyl bromide

75014 Vinyl chloride

75354 Vinylidene chloride (1,1-Dichloroethylene)

1330207 Xylenes (isomers and mixture)

95476 0-Xylenes

108383 m-Xylenes

106423 p-Xylenes

Antimony compounds

Arsenic compounds (inorganic including arsine)

Beryllium compounds

Cadmium compounds

Chromium compounds

Cobalt compounds

Coke oven emissions

Cyanide compounds [1]

Glycol ethers [2]

Lead compounds

Manganese compounds

Mercury compounds

Fine mineral fibers [3]

Nickel compounds

Polycyclic organic matter [4]

Radionuclides (including radon)

Selenium compounds

---

[1] X'CN where X = H' or any other group where a formal dissociation may occur; for example, KCN or Ca(CN)2.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3

R= alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH)n-OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter one micrometer or less.

[4] Includes organic compounds with more than one benzene ring and which have a boiling point greater than or equal to 100°C.

APPENDIX V
TOXIC POLLUTANTS

I. General.

A. Section II designates toxic pollutants for the purpose of Rule 8-5.

B. The number to the left of each chemical name in section II of this appendix is the Chemical Abstract Service (CAS) number for that substance. Chemical names not indicating a unique substance have not been assigned CAS numbers (compounds, coke oven emissions, glycol ethers, fine mineral fibers, polycyclic organic matter, and radionuclides). The definitions of glycol ethers and all chemical compounds (unless otherwise specified) include any unique substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of the structure of that substance.

II. List of toxic pollutants.

75070 Acetaldehyde

60355 Acetamide

64197 Acetic acid

67641 Acetone

75058 Acetonitrile

98862 Acetophenone

53963 2-Acetylaminofluorene

107028 Acrolein

79061 Acrylamide

79107 Acrylic acid

107131 Acrylonitrile

107051 Allyl chloride

7429905 Aluminum (fume or dust)

1344281 Aluminum oxide

92671 4-Aminobiphenyl

7664417 Ammonia

1336216 Ammonium hydroxide

6484522 Ammonium nitrate (solution)

62533 Aniline

90040 o-Anisidine

120127 Anthracene

1332214 Asbestos

71432 Benzene (including benzene from gasoline)

92875 Benzidine

98077 Benzotrichloride

100447 Benzyl chloride

92524 Biphenyl

103231 Bis(2-ethylhexyl) adipate

117817 Bis(2-ethylhexyl)phthalate (DEHP)

542881 Bis(chloromethyl)ether

75252 Bromoform

106990 1,3-Butadiene

111762 2-Butoxy ethanol

141322 Butyl acrylate

71363 n-Butyl alcohol

123728 Butyraldehyde

156627 Calcium cyanamide

1305788 Calcium oxide

105602 Caprolactam

133062 Captan

63252 Carbaryl

75150 Carbon disulfide

56235 Carbon tetrachloride

463581 Carbonyl sulfide

120809 Catechol

133904 Chloramben

57749 Chlordane

7782505 Chlorine

10049044 Chlorine dioxide

79118 Chloroacetic acid

532274 2-Chloroacetophenone

108907 Chlorobenzene

510156 Chlorobenzilate

67663 Chloroform

107302 Chloromethyl methyl ether

126998 Chloroprene

65996932 Coal tar pitch volatiles

1319773 Cresols/Cresylic acid (isomers and mixture)

95487 o-Cresol

108394 m-Cresol

106445 p-Cresol

98828 Cumene

110827 Cyclohexane

94757 2,4-D, salts and esters

3547044 DDE

1163195 Decabromodiphenyl oxide

334883 Diazomethane

132649 Dibenzofurans

96128 1,2-Dibromo-3-chloropropane

84742 Dibutylphthalate

106467 1,4-Dichlorobenzene(p)

91941 3,3-Dichlorobenzidene

111444 Dichloroethyl ether (Bis(2- chloroethyl)ether)

542756 1,3-Dichloropropene

62737 Dichlorvos

111422 Diethanolamine

121697 N,N-Diethyl aniline (N,N- Dimethylaniline)

117817 Di(2-Ethylhexyl) phthalate

60297 Diethyl ether

84662 Diethyl phthalate

64675 Diethyl sulfate

119904 3,3-Dimethoxybenzidine

127195 Dimethyl acetamide

60117 Dimethyl aminoazobenzene

119937 3,3'-Dimethyl benzidine

79447 Dimethyl carbamoyl chloride

68122 Dimethyl formamide

57147 1,1-Dimethyl hydrazine

131113 Dimethyl phthalate

77781 Dimethyl sulfate

534521 4,6-Dinitro-o-cresol, and salts

51285 2,4-Dinitrophenol

121142 2,4-Dinitrotoluene

117840 n-Dioctyl phthalate

123911 1,4-Dioxane (1,4-Diethyleneoxide)

122667 1,2-Diphenylhydrazine

106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)

106887 1,2-Epoxybutane

64175 Ethanol

110805 2-Ethoxy ethanol

140885 Ethyl acrylate

100414 Ethyl benzene

51796 Ethyl carbamate (Urethane)

75003 Ethyl chloride (Chloroethane)

74851 Ethylene

107073 Ethylene chlorohydrin

106934 Ethylene dibromide (Dibromoethane)

107062 Ethylene dichloride (1,2-Dichloroethane)

107211 Ethylene glycol

151564 Ethylene imine (Aziridine)

75218 Ethylene oxide

96457 Ethylene thiourea

75343 Ethylidene dichloride (1,1-Dichloroethane)

50000 Formaldehyde

98011 Furfural

76448 Heptachlor

118741 Hexachlorobenzene

87683 Hexachlorobutadiene

77474 Hexachlorocyclopentadiene

67721 Hexachloroethane

822060 Hexamethylene-1,6-diisocyanate

680319 Hexamethylphosphoramide

110543 Hexane

302012 Hydrazine

7647010 Hydrochloric acid

7664393 Hydrogen fluoride (hydrofluoric acid)

7783064 Hydrogen sulfide

123319 Hydroquinone

78842 Isobutyraldehyde

78591 Isophorone

67630 Isopropyl alcohol

58899 Lindane (all isomers)

108316 Maleic anhydride

67561 Methanol

72435 Methoxychlor

96333 Methyl acrylate

74839 Methyl bromide (Bromomethane)

74873 Methyl chloride (Chloromethane)

71556 Methyl chloroform (1,1,1-Trichloroethane)

101688 Methylenebis (phenylosocyanate)

78933 Methyl ethyl ketone (2-Butanone)

60344 Methyl hydrazine

74884 Methyl iodide (Iodomethane)

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115071 Propylene

78875 Propylene dichloride (1,2-Dichloropropane)

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75558 1,2-Propylenimine (2-Methyl aziridine)

110861 Pyridine

91225 Quinoline

106514 Quinone

7440224 Silver

100425 Styrene

96093 Styrene oxide

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79345 1,1,2,2-Tetrachloroethane

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8001352 Toxaphene (chlorinated camphene)

120821 1,2,4-Trichlorobenzene

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95954 2,4,5-Trichlorophenol

88062 2,4,6-Trichlorophenol

121448 Triethylamine

1582098 Trifluralin

540841 2,2,4-Trimethylpentane

1314621 Vanadium (fume or dust)

108054 Vinyl acetate

593602 Vinyl bromide

75014 Vinyl chloride

75354 Vinylidene chloride (1,1-Dichloroethylene)

1330207 Xylenes (isomers and mixture)

95476 0-Xylenes

108383 m-Xylenes

106423 p-Xylenes

Antimony compounds

Arsenic compounds (inorganic including arsine)

Beryllium compounds

Cadmium compounds

Chromium compounds

Cobalt compounds

Coke oven emissions

Cyanide compounds [1]

Glycol ethers [2]

Lead compounds

Manganese compounds

Mercury compounds

Fine mineral fibers [3]

Nickel compounds

Polycyclic organic matter [4]

Radionuclides (including radon)

Selenium compounds

Zinc (fume or dust)

Zinc compounds

---

[1] *X'CN where X = H' or any other group where a formal dissociation may occur; for example, KCN or Ca(CN)2.*

[2] *Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where*
n = 1, 2, or 3
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yeld glycol ethers with the structure: R-(OCH2CH)n-OH. Polymers are excluded from the glycol category.

[3] *Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter one micrometer or less.*

[4] *Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.*

VA.R. Doc. No. R93-587; Filed June 28, 1993, 1:28 p.m.

ALCOHOLIC BEVERAGE CONTROL BOARD

Title of Regulation: **VR 125-01-1. Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations (§ 1.22. Informal Conferences).**

Statutory Authority: §§ 4-11, 9-6.14:9 and 9-6.14:11 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

ORDER ADOPTING EMERGENCY REGULATION NO. A-259

Effective July 1, 1993, § 9-6.14:11 of the Code of Virginia requires agencies to "...ascertain the fact basis for their decisions of cases through informal conference or

consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing." Regulations submitted during the 1993 rulemaking process will not become effective until January 12, 1994. An emergency regulation is needed to comply with these statutory changes by July 1, 1993.

IT IS ORDERED that, pursuant to the provisions of §§ 4-11 A and 9-6.14:9 of the Code of Virginia, the following regulation be, and the same is hereby adopted, effective June 30, 1993.

VR 125-01-1 § 1.22. Informal Conferences.

A. Waiver.

An informal conference will be conducted when an applicant for a license or a licensee who is the subject of a disciplinary proceeding does not waive its right to such a conference. A waiver may be verbal or in writing. Unless the parties are advised otherwise, the agency will automatically waive the informal conference when the applicant or licensee does so. When the applicant or licensee is offered an informal conference and fails to respond within ten calendar days after the date of such offer, the informal conference will be deemed to be waived, and the case will be docketed for formal hearing.

B. Procedures.

The informal conference will be conducted for the reasons set forth in § 9-6.14:11 of the Code of Virginia; provided, however, inasmuch as the Code of Virginia continues to require that license suspension or revocation be preceded by a formal hearing (see § 4-37 (§ 4.1-227 - eff. 10/1/93) of the Code of Virginia), the informal conference may not be used for purposes of agreement fixing a period of suspension or license revocation, although a tender of an offer of settlement shall be received and retained for possible recommendation and later presentation at a formal hearing. The informal conference will serve as a vehicle to acquaint the interested party, in a general way, with the nature of the charges or objections, the evidence in support thereof and to hear any matters relevant thereto presented by the interested parties and to explore whether (i) administrative proceedings or objections should be terminated, (ii) a written warning should be issued, or (iii) a recommendation should be made for formal hearing. The conference will be open to the public, but participation will be limited to the interested parties, their attorneys-at-law or other qualified representatives, and designated board representatives. The conference will be held, when practical, at the county or city in which the establishment of the applicant or licensee is located. Reasonable notice of administrative charges or objections and the date, time and place of the conference shall be given to the participants. The failure of the applicant or licensee to appear at a scheduled conference will be deemed a waiver of the informal conference, and the case will be docketed for formal hearing. The informal proceeding will not be recorded. Sworn testimony will not be taken, nor will subpoenas be issued. At the conclusion of the informal conference, the designated board representative will complete a disposition form to be included in the case file.

In accordance with Virginia Code § 9-6.14:4.1, C, 5, this emergency regulation shall be limited in duration and shall remain in effect through June 29, 1994, unless modified or repealed by regulation or legislation.

IT IS FURTHER ORDERED that this order be filed in the manner prescribed by the Code of Virginia and that appropriate notice be given to interested parties of the Commonwealth.

The Board will receive, consider and respond to petitions by any interested persons at any time for reconsideration or revisions of this regulation.

ENTER: VIRGINIA ALCOHOLIC BEVERAGE CONTROL BOARD

/s/ George Hampton
Chairman
Date: June 30, 1993

ATTEST:

/s/ Sara M. Gilliam
Assistant Secretary
Date: June 30, 1993

APPROVED:

/s/ O. Randolph Rollins
Secretary of Public Safety
Date: June 25, 1993

APPROVED:

/s/ Lawrence Douglas Wilder
Governor
Date: June 25, 1993

FILED:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1993

VA.R. Doc. No. R93-679; Filed June 30, 1993, 10:54 a.m.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Informal Conference Disposition

IN THE MATTER OF:

APPLICATION FOR:

An informal conference was conducted by _____ (Person), _____ (Title) on _____ (Date) in _____ (Locality), to consider the objections stated in the Application Investigation Report dated _____.

This conference resulted in the following disposition:

___ Case should be scheduled for formal hearing.

___ Withdrawal of the objection(s) and issuance of the license effective _____. State any conditions or restrictions here:

___ Withdrawal of the application

Seen and Agreed to: _____ Objectors _____ Date

_____ Applicant _____ Date

Signed: _____ Person Presiding _____ Date

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Waiver of Informal Conference

IN THE MATTER OF:

DISCIPLINARY _____ APPLICATION _____

_____ (Number)

The licensee/applicant knowingly and voluntarily waives its right to an informal conference. When the formal hearing is scheduled, all parties will be provided with notice of the date, time and place of hearing.

Seen and Agreed to : _____ Licensee/Applicant _____ Date

_____ (Print Name)

Signed: _____ (Representative of Agency) _____ Date

_____ (Print Name)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Informal Conference Disposition

IN THE MATTER OF:

LICENSE NO.

An informal conference was conducted by _____ (Person),

_____ (Title) on _____ (Date) in _____ (Locality),

to consider the charges stated in the Report of Licensee

Violation dated _____.

This conference resulted in the following disposition:

___ Proceeding terminated

___ Written warning issued

___ Recommend consent settlement offer

___ Case should be scheduled for formal hearing

Signed: _____
(Person Presiding)

Seen: _____ _____
Licensee Date

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Title of Regulation: **VR 130-01-1:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-404 of the Code of Virginia.

Effective Dates: July 1, 1993, through June 30, 1994.

Preamble:

The Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of architects, professional engineers and land surveyors and the certification of landscape architects and interior designers in Virginia.

Pursuant to the Administrative Process Act, the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 29, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1993

VR 130-01-1:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation the agency shall evaluate it for effectiveness and

continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-683; Filed June 30, 1993, 11:49 a.m.

ATHLETIC BOARD

Title of Regulation: **VR 140-01-01:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-805 of the Code of Virginia.

Effective Dates: June 28, 1993, through June 27, 1994.

Preamble:

The Virginia Athletic Board intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing wrestlers and boxers, matches and exhibitions in Virginia.

Pursuant to the Administrative Process Act, the Virginia Athletic Board is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 28, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations

Date: June 28, 1993

VR 140-01-01:1. Public Participation Guidelines.

§ 1. Mailing list.

The Virginia Athletic Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-630; Filed June 28, 1993, 11:59 a.m.

BOARD FOR AUCTIONEERS

Title of Regulation: **VR 150-01-1:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Dates: June 24, 1993, through June 23, 1994.

Preamble:

The Board for Auctioneers intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of auctioneers in Virginia.

Pursuant to the Administrative Process Act, the Board for Auctioneers is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 24, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 24, 1993

VR 150-01-1:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Auctioneers (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the

Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-588; Filed June 24, 1993, 2:30 p.m.

BOARD FOR BRANCH PILOTS

Title of Regulation: **VR 535-01-00:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-902 of the Code of Virginia.

Effective Dates: July 1, 1993, through June 30, 1994.

Preamble:

The Board for Branch Pilots intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of branch pilots in Virginia.

Pursuant to the Administrative Process Act, the Board for Branch Pilots is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 29, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1993

VR 535-01-00:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Branch Pilots (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific

expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-682; Filed June 30, 1993, 11:49 a.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

EDITOR'S NOTICE: The emergency regulation filed by the Department of Criminal Justice Services is not being published due to the length. 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, Virginia Code Commission, 910 Capitol Square, Room 262, Richmond, VA 23219, and at the Department of Criminal Justice Services, 805 East Broad Streeet, Richmond, VA 23219. Copies of the regulation may be obtained from the Department of Criminal Justice Services, telephone (804) 786-4000.

Title of Regulation: **VR 240-03-02. Rules Relating to Private Security.**

Statutory Authority: § 9-182 of the Code of Virginia.

Effective Dates: July 1, 1993, through June 30, 1994.

Preamble:

The 1992 General Assembly passed legislation that amended Chapter 27, Article 2 Title 9; and enacted Article 2.1 Title 9 of the Code of Virginia. The legislation will become effective July 1, 1993.

The legislation transfers the authority and responsibility of administering the private security services regulatory program from the Department of Commerce to the Criminal Justice Services Board.

Additionally, the legislation empowers and directs the Board to promulgate regulations to secure the public safety and welfare against incompetent, unqualified, unscrupulous, or unfit persons engaged in the business of private security services. These legislative mandates become effective July 1, 1993.

Similarly, the regulations that will guide the implementation of these statutory mandates must become effective on the same date.

Necessity for Action:

Existing regulatory regulations governing private security services businesses are valid until midnight on June 30, 1993. To maintain continuity of the private security services program, regulations must be adopted and must become effective on July 1, 1993. Failure to adopt such regulations will result in the absence of regulatory procedures to guide the department and private security firms across the state of the process and requirements relating to licensing, registration, and certification. The legislative authority of the department to promulgate such regulations in accordance with the steps and usual adoption procedures required by the Administrative Process Act does not become effective until July 1, 1993. The department finds that this situation necessitates adopting regulations under emergency procedures as provided by § 9-6.14:4.1 C (5) of the Code of Virginia (1950) as amended.

Failure to adopt the regulation by July 1, 1993 will result in a delay in the implementation of Chapter 27, Article 2 and Article 2.1 of Title 9 Code of Virginia.

Review and Expiration of Regulation:

While preparing these emergency regulations, the department has made several efforts to receive and consider comments and suggestions from the private security industry. Similarly, at any time, the department will receive, consider, and respond to petitions by any interested person concerning the reconsideration or revision of the emergency regulations set forth hereinafter.

Additionally, these emergency regulations shall rescind the agency's rules entitled "Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.

These emergency regulations shall be effective until midnight June 30, 1994.

Request For Approval:

The governor's approval is requested to adop

regulations under the emergency procedures provisions of the Administrative Process Act for the purpose of implementing Chapter 27, Article 2 and Article 2.1 of Title 9 Code of Virginia.

/s/ Lindsay G. Dorrier, Jr.
Director

CONCURRENCE:

/s/ O. Randolph Rollins
Secretary of Public Safety

APPROVAL:

/s/ Lawrence Douglas Wilder
Governor

FILED WITH:

/s/ Joan Smith
Registrar of Regulations

VA.R. Doc. No. R93-688; Filed June 30, 1993, 2:32 p.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: **VR 270-01-0058. Regulations Governing Pilot Projects for an Alternative Education Program.**

Statutory Authority: §§ 22.1-257 and 22.1-278 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

The 1993 General Assembly approved House Bill 2358 which amends §§ 22.1-257 and 22.1-278 which require the Department of Education (using the request for proposal process by July 1, 1993) to select and approve up to four pilot programs for an alternative education program. Further, it requires that the programs be awarded no later than August 20, 1993. The intent of the legislation is for the pilot programs to be in operation when schools open in August or September.

The timeline required by House Bill 2358 does not provide a timeline sufficient to follow the normal APA timeline for approving the regulations governing the programs; therefore, the Department of Education is requesting that emergency regulations be approved.

Summary:

The Regulations Governing Pilot Projects for an Alternative Education Program are being promulgated to establish four regional pilot projects for school-age children who (i) have a pending violation of specific school board policy; or (ii) have been expelled or have long-term suspensions; or (iii) have been released from a youth learning center and identified for the Program by the superintendent of the Department of Correctional Education and the local school division superintendent.

VR 270-01-0058. Regulations Governing Pilot Projects for an Alternative Education Program.

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:

"Eligible students" means those school-age students who (i) have committed an offense in violation of school board policies relating to weapons, alcohol or drugs, or intentional injury to another person, or against whom a petition or warrant has been filed alleging such policy violations are pending; or (ii) have been expelled from school attendance or have received one suspension for an entire semester, or have received two or more long-term suspensions within one school year; or (iii) have been released from a youth learning center and have been identified by the Superintendent of the Department of Correctional Education and the relevant division superintendent as requiring an alternative education program; or (iv) have been recommended by the school board for placement. Upon finding that a school-age child has committed an offense in violation of relevant school-board policies, or against whom such charges are pending, the school board may require the child to attend an alternative education program.

"Length of assignment to alternative education program" means no child shall be assigned to any alternative education program for more than one school year without an annual assessment of the placement. The annual assessment will determine the appropriateness of transitioning the child into the school division's regular program or retaining the child in the alternative education setting.

"Long-term suspension" means when a child is removed from class or school for more than ten (10) consecutive school days.

"One school year" means no more than 180 teaching days.

"Regional pilot program" means a program supported and implemented by two or more school divisions which are either geographically contiguous or have an interest in collaborating.

PART II.

PURPOSE.

§ 2.1. Purpose.

The Program was created for the purpose of piloting four regional alternative education programs for one year for those students who (i) have a pending violation of specific school board policy; or (ii) have been expelled or have long-term suspensions; or (iii) have been released from a youth learning center and identified for the Program by the superintendent of the Department of Correctional Education and the local school division superintendent. Each Program will involve two or more school divisions working in collaboration to establish options for students who no longer have access to school or who are returning from youth learning centers.

PART III.
ADMINISTERING AGENCY.

§ 3.1. Authority.

§§ 22.1-257 and 22.1-278 of the Code of Virginia names the State Board of Education as the administering agency and directs the Board to develop guidelines necessary to implement and administer the Program.

PART IV.
FUNDING.

§ 4.1. Funds Available.

The maximum funds available for pilot projects are $1.2 million for the 1993-94 fiscal year. The average grant award will be $300,000 per pilot.

§ 4.2. Expenditure requirements.

Successful applicants will receive a grant award which will be issued to the local school division designated as the fiscal agent in the agreement executed by the participating school divisions. School divisions shall follow local and state regulations and policies for the expenditure of funds. Funds will be provided on a cost-reimbursement basis after an expenditure report is submitted to the Department of Education. Should all funds available under the provisions of the Program not be utilized, such balances automatically revert to the Department of Education.

PART V.
SCHOOL DIVISION SELECTION AND RESPONSIBILITIES.

§ 5.1. Selection of school divisions for participation.

To participate in the Program, two or more local school divisions shall submit a proposal to the Department of Education. The proposal will offer educational, pupil personnel, and instructional support for students eligible for the Program. The Department of Education shall select sites from eligible proposals.

§ 5.2. Criteria for proposals.

A school division's proposal or documentation must demonstrate how it plans to achieve the purposes of the Program as defined in Part II. The proposal or documentation must also address the following:

A. An agreement executed by two or more school divisions and written approval of their respective school boards to pilot an alternative education option for eligible students. The agreement should contain a plan for the apportionment of responsibilities for the administration, management, and support of the program, including, but not limited to, the facilities and location for the program, daily operation and oversight, staffing, instructional materials and resources, transportation, funding and in-kind services, and program of instruction.

B. A plan of community outreach which includes, but is not limited to, the following:

1. strong school, business, and community partnerships,

2. parental involvement in the educational process of participating children, and

3. an interagency agreement for cooperation.

C. An intensive, accelerated instructional program designed to establish high standards and academic achievement for participating students. Other components of this program shall include, but not be limited to, the following:

1. an emphasis on building self-esteem and the promotion of personal and social responsibility,

2. low pupil-teacher ratio to promote and encourage a high level of interaction between the student and the teacher,

3. an extended day program, where appropriate, to facilitate remediation; tutoring; counseling; organized, age-appropriate, developmental education for elementary and middle school children; and opportunities that enhance acculturation and permit students to improve their social and interpersonal relationship skills,

4. the number of children who may be assigned to the regional pilot alternative education program during the school year to ensure adequate staff to student ratios, and

5. a plan for the annual assessment and the placement of transitioning the enrolled students int the mainstream of their school division's regula

program or alternative education program(s).

D. Specific measurable goals and objectives, and an evaluation component to determine the program's effectiveness in reducing acts of crime and violence by students, the dropout rate, the number of youth committed to youth learning centers, and recidivism; and in increasing the academic achievement levels and rehabilitative success of participating students, admission to institutions of higher education and other post-secondary education and training programs, and improving staff retention rates.

E. An on-going program of staff development and training involving staff members assigned to the project as well as regular staff and outside agency involvement.

F. A school board plan requiring written notification to the pupil's parent, guardian, or other person having charge or control, when a pupil commits an offense in violation of school board policies. The notification will be made no later than two school days following the occurrence of the violation of the school board policy. A school board shall require a principal of a school where the child is in attendance or other appropriate school personnel to develop appropriate measures, in conjunction with the pupil's parent or guardian, for altering such behavior.

G. A plan developed by the participating school boards for maintaining student records and transferring those records to other locations to ensure instructional continuity for those who return to their regular school setting from the alternative program.

§ 5.3. School responsibilities.

The Department of Education shall require each funded pilot program to provide the following:

A. Three interim reports will be due in October and December, 1993, and June, 1994. A final report will be due on August 1, 1994.

B. The Program shall be educationally sound, suitable for the stated objectives, and conducted with a reasonable probability of success.

C. The Program goals shall have educational and practical significance for the population served.

D. Participating project sites must have staff with special or unique qualifications that will be advantageous in pursuing the goals of the project.

E. Participating project sites must have and will make available adequate physical facilities and support services to ensure successful management of the Program.

APPROVAL:

/s/ Lawrence Douglas Wilder
Governor
Commonwealth of Virginia
Date: June 24, 1993

Filed with Registrar of Regulations June 30, 1993.

VA.R. Doc. No. R93-674; Filed June 30, 1993, 12:33 p.m.

VIRGINIA EMPLOYMENT COMMISSION

Title of Regulation: **VR 300-01-1. Virginia Employment Commission Regulations and General Rules - Definitions and General Provisions.**

Statutory Authority: § 60.2-111 of the Code of Virginia.

Effective Dates: June 28, 1993, through June 27, 1994.

Preamble:

The following regulation is being amended pursuant to § 9-6.14:4.1 (C) (5) of the Code of Virginia in response to an emergency situation. Due to 1993 amendment of the Virginia Administrative Process Act (Code of Virginia § 9-6.14:1 et seq.) these changes must be effected by July 1, 1993 to remain in compliance with Virginia law.

VR 300-01-1. Virginia Employment Commission Regulations and General Rules - Definitions and General Provisions.

§ 1. Definitions.

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

"Act" means the Virginia Unemployment Compensation Act as set out in Title 60.2 (§ 60.2-100 et seq.) of the Code of Virginia.

"Additional claim" means a claim for unemployment compensation benefits filed within an existing benefit year by a claimant who has had an intervening period of employment since filing a prior claim.

"Agent state" means any state in which an individual files a claim for benefits from another state.

"Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

"Area of high unemployment" means that geographic area of Virginia including all cities and counties served by a particular full-service unemployment office where the

average unemployment rate as determined by the Commission has been 10% or more during the first four of the last five completed calendar quarters.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance law of any state or under any federal program in which such compensation is payable in accordance with applicable state law.

"Cash value of remuneration" means with respect to rent, housing, lodging, board, or any other payment in kind, considered as payment for services performed by a worker, in addition to or in lieu of (rather than a deduction from) money wages, the value agreed upon between the employing unit and the worker at the time of entering into the contract of hire or as mutually agreed thereafter. If there is no such agreement, the value thereof shall be an amount equal to a fair estimate of what the worker would, according to his custom and station, pay for similar goods, services, or accommodations in the same community at premises other than those provided by the employing unit.

"Combined-wage claimant" means a claimant who has covered wages under the unemployment compensation law of more than one state and who has filed a claim under the Interstate Arrangement for Combining Employment and Wages.

"Commission" means the Virginia Employment Commission as defined in § 60.2-108 of the Code of Virginia.

"Continued claim" means a request for the payment of unemployment compensation benefits which is made after the filing of an initial claim.

"Initial claim" means any new, additional, or reopened claim for unemployment compensation benefits.

"Interstate Benefit Payment Plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

"Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Interested jurisdiction" means any participating jurisdiction to which an election submitted under regulation VR 300-01-2, Part V, is sent for its approval and "interested agency" means the agency of such jurisdiction.

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, or with respect to the federal government, the coverage of any federal unemployment compensation law.

"Liable state" means any state against which an individual files, through another state, a claim for benefits.

"Mass separation" means a separation (permanently or for an indefinite period or for an expected duration of seven days or more) at or about the same time and for the same reasons (i) of 20%, or more, of the total number of workers employed in an establishment, or (ii) of 50%, or more, of the total number of workers employed in any division or department of any establishment, or (iii) notwithstanding any of the foregoing, a separation at or about the same time and for the same reason of 25 or more workers employed in a single establishment.

"New claim" means a claim for unemployment compensation benefits filed in person at an unemployment insurance office or other location designated by the Commission by an individual who does not have an existing benefit year established.

"Partially unemployed individual" means an individual who during a particular week (i) had earnings, but less than his weekly benefit amounts, (ii) was employed by a regular employer, and (iii) worked, but less than his normal customary full-time hours for such regular employer because of lack of full-time work.

"Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Arrangement for Combining Employment and Wages and whose adherence thereto has not terminated.

"Part-total unemployment" means the unemployment of any individual in any week of less than full-time work in which he earns some remuneration (but less than his weekly benefit amount) and during which he is not attached to a regular employer; or, in any week in which he has wages such as holiday or vacation pay which are less than his weekly benefit amount, but where no actual work has been performed regardless of his attachment to a regular employer.

"Paying state" means (i) the state in which a combined-wage claimant files a combined-wage claim, if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages, and combining will increase either the weekly benefit amount or the maximum benefit amount, or (ii) if the state in which a combined-wage claimant files a combined-wage claim is not the paying state under the criterion set forth in (i) above, or if the combined-wage claim is filed in Canada or the U.S. Virgin Islands, then the paying state shall be that state where the combined-wage claimant was last employed in covered employment among the states in which the claimant qualifies for unemployment benefits on the basis of

combined employment and wages.

"Reopened claim" means the first claim for unemployment compensation benefits filed within an existing benefit year after a break in the claim series caused by any reason other than intervening employment.

"Services customarily performed by an individual in more than one jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

"Severance and dismissal pay" means for the purpose of taxation and benefits, all payments made by an employer at or within 30 days of an employee's separation. Such payments may be allocated by the employer for up to 30 days following separation, and will in such cases be deemed to have been paid in those weeks covered by the allocation. If no allocation is made by the employer, such payments will be deemed allocated to the last day of work.

"State" means one of the United States, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia.

"Total unemployment" means the unemployment of an individual in a week regardless of whether he is separated or attached to an employing unit's payroll, when he performs no work and has no wages payable to him.

"Transferring state" means a state in which a combined-wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.

§ 2. Development of regulations.

A. Pursuant to § 9-6.14:7.1 of the Code of Virginia, the Commission shall solicit the input of interested parties in the formulation and the development of its rules and regulations. *The Commission shall receive petitions from any person proposing new regulations or amendment of existing regulations. All such proposals shall be reviewed by the Commission and receive response within 180 days. Formulation and development of all new or amended regulations shall be subject to the* ~~The~~ following public participation guidelines ~~shall be used for this purpose~~ .

B. Interested parties for the purpose of this regulation shall be:

1. The Governor's Cabinet Secretaries.

2. Members of the Senate Committee on Commerce and Labor.

3. Members of the House Committee on Labor and Commerce.

4. Members of the State Advisory Board.

5. Special interest groups known to the Virginia Employment Commission.

6. Any individual or entity requesting to be an interested party.

7. Those parties who have expressed an interest in VEC regulations through oral or written comments in the past.

C. Prior to the formulation of a proposed regulation, notice of an intent to draft a regulation shall appear in a Richmond newspaper and may appear in any newspaper circulated in localities particularly affected by the proposed regulation. Other media may also be utilized where appropriate, including but not limited to, trade or professional publications. Notice of an intent to draft a regulation shall also be mailed to all interested parties and shall be posted in all VEC offices across the Commonwealth. These individuals, groups and the general public shall be invited to submit written data, views, and arguments on the formulation of the proposed regulation to the Commission at its administrative office in Richmond, Virginia.

D. Publication of the intent to draft a regulation, as well as, the proposed regulation shall also appear in the Virginia Register of Regulations.

E. ~~The State Advisory Board and special interest groups, including but not limited to, the A.F.L.-C.I.O., Virginia Manufacturers' Association, Retail Merchants' Association, State Chamber of Commerce, the Virginia Poverty Law Center, and the State Employer Advisory Committee, shall be invited by mail to submit data, views and arguments orally to the Commission.~~ *The Virginia Employment Commission intends for the State Advisory Board to participate in all meetings of the agency's Regulatory Review Committee during the process in which regulatory amendments are being formulated. Any proposed amendments shall be submitted to members of the Advisory Board and to special interest groups and others registering interest in working with the Commission. If sufficient interest is expressed to the Commission in forming additional advisory groups, the Commission will constitute such advisory groups as may be appropriate to solicit a full range of views. These groups shall be invited to submit data, views, and arguments regarding the proposed amendments. Any responses to such solicitation shall be considered by the Commission in its deliberations.*

F. Failure of any interested party to receive notice to submit data, views, or oral or written arguments to the Commission shall not affect the implementation of any regulation otherwise formulated, developed and adopted pursuant to the Administrative Process Act, Chapter 1.1:1

(§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

G. The public participation guidelines of this regulation shall not apply to emergency regulations or those regulations excluded or exempted by any section of the Administrative Process Act.

H. Once the public participation guidelines have been implemented, the Commission may draft a regulation and proceed with adoption in accordance with the Administrative Process Act. During the formal procedures required by the Administrative Process Act, input will be solicited from the interested parties and the general public in writing to the Commission and at public hearings held at Richmond and, in the discretion of the Commission, at other locations.

§ 3. Review of regulations.

At least yearly, or more often as may be mandated by statute or Executive Order, a regulatory review committee consisting of one member from each division of the Commission shall meet to review these regulations and general rules. The committee shall recommend the retention, deletion, and amendment of the existing rules and regulations in light of their impact upon the general public and employers with emphasis upon the requirements of the Paperwork Reduction Project as mandated by Executive Order. The committee shall also recommend additions to the regulations and general rules under the same criteria.

I certify that this regulation is full, true, and correctly dated.

/s/ Ralph G. Cantrell
Commissioner
Virginia Employment Commission
Date: June 28, 1993

APPROVED BY:

/s/ Cathleen A. Magennis
Secretary
Economic Development
Date: June 14, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor
Commonwealth of Virginia
Date: June 15, 1993

FILED BY:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 28, 1993

VA.R. Doc. No. R93-629; Filed June 28, 1993, 5:08 p.m.

DEPARTMENT OF FORESTRY

Title of Regulation: **VR 310-01-1. Emergency Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1101 of the Code of Virginia.

Effective Dates: July 8, 1993, through July 7, 1994.

Preamble:

As State Forester, I wish to adopt the referenced emergency regulation, so that the Department of Forestry will be able to continue to make regulations after June 30, 1993. With your approval, I will take the necessary actions to have this regulation filed with the Registrar of Regulations.

The emergency regulation will make the Department of Forestry's public participation guidelines consistent with soon-to-take-effect requirements of the Administrative Process Act, including the provision for "a general policy" for the use of certain advisors. In the absence of such a "general policy," the agency will not be able to initiate regulation making on and after July 1, 1993.

Time is of the essence in acting on the emergency public participation guidelines, which must be in effect before July 1, 1993, which means the attached guidelines must be fully signed and filed before July 1, 1993 with the Registrar of Regulations.

VR 310-01-1. Emergency Public Participation Guidelines.

§ 1. Definitions.

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

"Advisor" means any of the following: (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; and (v) any combination thereof.

"Department" means the Virginia Department of Forestry.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia (1950), as amended.

§ 2. Purpose.

When developing any proposed new or revised regulation, or when considering the repeal of an existing regulation, the State Forester will solicit input and comments from interested citizens, organizations associations and industry, and will afford them the

opportunity to submit data, views, and arguments, either orally or in writing, to the Department or its specially designated subordinate. These Guidelines for Public Participation outline the manner in which the Department will encourage participation of citizens in the formation and development of such regulatory proposals under the Virginia Administrative Process Act.

The Guidelines for Public Participation are based on the principle that citizens have both a right and a responsibility to take part in governmental processes, that government functions best when it provides for participation by the public; and that Department regulations should impose only those requirements which are necessary and do not unreasonably burden private businesses or individual citizens.

These Guidelines for Public Participation shall apply to all regulations administered by the Department which are subject to the Administrative Process Act. The Guidelines for Public Participation are to be used by the Department to identify and notify interested parties of the Department's intent to adopt regulations and to provide an opportunity for public participation.

§ 3. Initiation of regulation.

Rulemaking may be initiated at any time by the State Forester. A petition for a new regulation or for amendment, addition, or repeal of any existing regulation may be filed with the State Forester at any time by any department of government, group, or individual. The State Forester will consider the petition and will respond to it within the time required by law.

§ 4. Identification of interested parties and advisors.

A. The State Forester in identifying parties interested in proposed regulation making and in identifying potential advisors will use the following:

(1) A directory of forestry organizations printed by the Department;

(2) Available individual industry mailing lists;

(3) Trade organizations and associations;

(4) A listing of persons who request to be placed on a mailing list maintained by the Department;

(5) A listing of persons who previously participated in public proceedings concerning related subjects or issues; and

(6) A listing prepared by the Department's operating divisions of persons who would have a potential interest in participating in the formation of regulations within the divisions' specific areas of responsibility.

B. All mailing lists will be revised every other year to insure that they are up-to-date.

§ 5. Public participation.

A. The State Forester will hold public hearings on all proposed regulations subject to Article 2 of the Administrative Process Act. A copy of the proposed regulation will be furnished to all persons who responded to the notice of intended regulatory action. Also, the Department will send a copy of the proposed regulation to parties that the Department identifies as being interested in the proposed regulation.

B. The Department will also prepare a news release and distribute it to all daily and weekly newspapers, radio and television stations, and news wire services serving Virginia. The news release will include information about the subject matter and purpose of the proposed regulation and about provisions for public comment, including the times, dates, and places of the public hearings. Copies of all proposed regulations will be available for public inspection at the regional offices of the Department.

C. During the 60-day public participation period, the regulation will also be reviewed by the following:

1. The public;

2. The Governor;

3. The General Assembly; and

4. The Secretary of Economic Development.

D. The Department will hold a public hearing in Charlottesville, and may hold public hearings in other locations if the proposed regulation is of special interest to that geographic area. If determined desirable, the Department may hold public hearings on a given proposed regulation in several locations.

E. To the extent possible, public hearings will be conducted at a time believed to be generally convenient for persons and organizations most directly affected by the proposed regulation. The Department will take into consideration the calendar for major organization and trade association meetings published by the Division of Legislative Services.

F. The public will be offered the opportunity to make oral and written comments. Persons addressing the proposed regulation at any public hearing will be encouraged to provide to the Department written copies of their statements.

G. At the Department's discretion, the Department may hold the record open to provide an additional time period for receiving written comments.

§ 6. Final action on proposed regulations.

After a regulation has been adopted pursuant to the thirty-day final-adoption process, the Department may issue a general Department news release about the regulation.

§ 7. Copies of regulations.

The Department will print copies of adopted regulations. Copies of adopted regulations may be obtained by writing the Department of Forestry at Alderman and McCormick Roads, Charlottesville, Virginia, 22903.

§ 8. General policy for the use of advisors.

A. This section sets out the general policy of the Department in the use of advisors. This general policy addresses the circumstances in which the Department considers advisors appropriate and the circumstances under which the Department intends to make use of advisors.

B. The Department will include in any notice of intended regulatory action filed with the Registrar of Regulations at or after the time these Guidelines for Public Participation take effect: (i) any provision required by statute relating to the notice of intended regulatory action; and (ii) a statement inviting comment on whether there should be an advisor. The Department considers an advisor appropriate and intends to make use of an advisor when:

1. The Department receives in writing from at least twenty-five persons during the pendency of the notice of intended regulatory action declarations of interest in having an advisor appointed with respect to the regulation under development; and

2. The subject matter of the notice of intended regulatory action has not previously been the subject of regulation making by the Department.

C. Despite the provision of § 8(B), the Department may in its sole discretion, appoint an advisor.

D. The Department shall determine whether the advisor, if any, shall be: (i) a standing advisory panel; (ii) an ad-hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination of subdivisions (i) through (iv) of this subsection.

E. The amending provisions contained in this emergency regulation shall apply only to regulatory actions for which a notice of intended regulatory action is filed (irrespective of the date of adoption of the notice of intended regulatory action) with the Registrar of Regulations at or after the time these Guidelines for Public Participation take effect.

§ 9. Petitions.

The Department will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of these Guidelines for Public Participation.

/s/ James W. Garner, Jr.
State Forester
Date: June 18, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: June 14, 1993

Filed with the Registrar of Regulations on July 8, 1993.

VA.R. Doc. No. R93-718; July 8, 1993, 1:53 p.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.**

Statutory Authority: § 32.1-122.6:02 of the Code of Virginia.

Effective Dates: July 1, 1993, through June 30, 1994.

Preamble:

Nature of Emergency - These regulations govern the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program enacted by the 1993 Virginia General Assembly, and that becomes effective July 1, 1993.

Promulgation of these regulations on the effective date of the legislative actions creating the Program is of particular importance to carrying out the legislative intent, to provide an incentive to Registered Nurses in Virginia to attend Nurse Practitioner/Nurse Midwife programs and subsequently provide services in medically underserved areas.

The regulations must be in the hands of the guidance staff of the participating nurse practitioner/nurse midwife schools at the earliest possible date for their use in informing incoming 1993-94 students of the benefits available under the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

Purpose - To incorporate Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program in order to make scholarship funds available for nurse practitioner/nurse midwife students and so that compliance with the law is possible on July 1, 1993.

Pursuant to the authority vested in me by Virginia Code Section 32.1-20, I find that the foregoing regulations, VF

355-40-700:E, Regulations Governing the Nurse Practitioner/Nurse Midwife Scholarship Program, are necessitated by an emergency situation as set out in the preamble (summary). Pursuant to subsection C 5 of § 9-6.14:4.1, I hereby adopt the foregoing regulations.

/s/ Robert B. Stroube, MD, MPH
State Health Commissioner
Date: June 29, 1993

Concurrences

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 23, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

VR 355-40-700. Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

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

"Certified" means having passed an examination through a national certifying organization.

"Commissioner" means the State Health Commissioner.

"Interest at the Prevailing Bank Rate for Similar Amounts of Unsecured Debt" means the prime lending rate as published in the Wall Street Journal on the last day of the month in which the decision to repay is communicated to the commissioner by the recipient, plus two percentage points.

"Medically Underserved Area" means a geographic area in Virginia designated by the State Board of Health in accordance with the Rules and Regulations for the Identification of Medically Underserved Areas. (VR 355-40-05).

"Nurse Midwife" means a registered nurse who has met the additional requirements of education and professional certification to practice as a nurse midwife in the Commonwealth.

"Nurse Practitioner" means a registered nurse who has met the additional requirements of education and professional certification to practice as a nurse practitioner in the Commonwealth.

"Practice" means to pursue a profession actively.

"Recipient" or "Scholarship Recipient" means an eligible registered nurse who enters into a contract with the Commissioner and receives one or more scholarship awards via the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

PART II.
GENERAL INFORMATION.

§ 2.1. Authority.

Title 32.1, Chapter 6, 32.1-122.6:02 of the Code of Virginia (1950), as amended requires the State Board of Health to promulgate regulations to administer the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

§ 2.2. Purpose.

These regulations set forth: the criteria for eligibility, circumstances under which awards will be made, and the process for awarding Virginia nurse practitioner/nurse midwife scholarships to students; the general terms and conditions applicable to the obligation of practice full time as a nurse practitioner/nurse midwife in a medically underserved area of Virginia, as identified by the Board of Health by regulations; and penalties for a recipient's failure to fulfill the practice requirements of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program.

§ 2.3. Administration.

The Commissioner of Health shall act as fiscal agent for the Board in administration of the scholarship program through a Nursing Scholarship Committee. All scholarship awards are made by a Nursing Scholarship Committee, appointed by the State Board of Health. The Nursing Scholarship Committee shall consist of five members or their designees: three faculty representing nurse practitioner or nurse midwife education programs, one nurse practitioner actively engaged in practice, and one former scholarship recipient (commencing the third year of scholarship availability). Committee appointments shall be for two years and members may not serve more than two consecutive terms.

§ 2.4. Variance.

Any requests for variance from these regulations shall be considered on an individual basis by the Board in regular session.

PART III.

SCHOLARSHIP AWARDS.

§ 3.1. Eligible Applicants.

In accordance with the authorizing statute and to further the purpose of identifying the recipients most likely to contribute and maintain provision of services in medically underserved areas in employment settings that serve persons unable to pay or supported by assistance programs, preference for the scholarship award will be given to the following: Any student accepted or enrolled in an accredited nurse practitioner or nurse midwifery program shall be eligible for a Virginia Nurse Practitioner/Nurse Midwife Scholarship. Preference for the scholarship award shall be given to: residents of the Commonwealth, minority students, students enrolled in family practice, obstetrics and gynecology, pediatric, adult health and geriatric nurse practitioners programs; and residents of medically underserved areas of Virginia as determined by the Board of Health in accordance with the provisions.

§ 3.2. Scholarship Amount.

The amount for Virginia Nurse Practitioner/Nurse Midwife scholarships available each year shall be as provided by the Virginia General Assembly in that year's Appropriation Act. Scholarships shall be awarded to the recipients upon or following the recipient's execution of a contract with the Commissioner for scholarship repayment.

§ 3.3. Distribution of Scholarships.

Annually, by March 1 of each calendar year the Nursing Scholarship Committee shall inform the nurse practitioner/nurse midwife schools of education of the availability of the nurse practitioner/nurse midwife scholarships and provide the schools with application forms for submission by eligible applicants. Until such time as a fully accredited nurse midwife education program is established at any health service center in Virginia, attendance at an accredited program in a nearby state is acceptable for scholarship eligibility. The Nursing Scholarship Committee shall convene annually for the purpose of reviewing applications and awarding scholarships. Scholarship awards shall be based upon majority vote of the Nursing Scholarship Committee.

PART IV.
CONTRACTS.

§ 4.1. Contract Provisions.

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

A. Provide that the recipient will pursue the nurse practitioner/nurse midwife course of the designated school until graduation and will pursue full-time practice as a nurse practitioner or nurse midwife within two years following completion of training and for a period of years equal to the number of annual scholarships awarded. The area of employment must be on the list of Virginia Medical Underserved areas approved by the State Board of Health; in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services on the date of commencement of contract obligation fulfillment.

B. Provide that the recipient repaying the scholarship obligation will practice in a medically underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons medical care services.

C. Provide that the recipient will not voluntarily obligate himself for military service prior to completion of repayment period.

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

E. Provide that if the recipient fails to maintain satisfactory academic progress the recipient may, upon certification by the Nursing Scholarship Committee, be relieved of the contract obligation to engage in full-time nurse practitioner/nurse midwife practice in a medically underserved area and in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services, upon repayment to the Commonwealth of the total amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt, computed from the date of receipt of funds by the recipient.

F. Provide that if the recipient becomes permanently disabled so as not to be able to engage in nurse practitioner or nurse midwife practice, the recipient may, upon certification of the Nursing Scholarship Committee, be relieved of the obligation under the contract to engage in full-time practice in an underserved area, in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services, upon repayment to the Commonwealth of the tota

amount of scholarship funds received plus interest at the prevailing bank rate for similar amounts of unsecured debt from the date of receipt of scholarship funds. For recipients completing part of the practice obligation prior to becoming permanently disabled, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship award multiplied by the number of years practiced. Unusual hardship may be reviewed by the Board on a case-by-case basis.

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

H. Provide that any recipient of a scholarship who fails or refuses to fulfill the obligation to practice in a medically underserved area in an employment setting that provides services to persons who are unable to pay for the service and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services for a period of years equal to the number of annual scholarships received shall reimburse the Commonwealth three times the total amount of the scholarship funds received plus interest on the tripled obligation amount at the prevailing bank rate of interest for similar amounts of unsecured debt.

I. Provide that for a recipient who fulfills only part of the contractual obligation, the total amount of scholarship funds received, and owed, shall be reduced by the amount of the annual scholarship, divided into months and multiplied by the number of months practiced in the appropriate area, and the remainder tripled as provided in subdivision F of this section.

§ 4.2. Repayment.

A. Unless repayment is forgiven as specified in subdivision G of § 4.1 or by special variance as provided in subdivision F of § 4.1 all scholarships shall be repaid to the Commonwealth, either by the recipient's practice as a nurse practitioner or nurse midwife in a medically underserved area, in an employment setting that provides services to persons who are unable to pay for the service, and that participates in all government sponsored insurance programs designed to assure access of covered persons to medical care services, or through cash payments as specified in subdivisions H and I of § 4.1.

B. Repayment By Practice.

It is the intent of the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program that recipients repay their scholarship obligation by practice. Each recipient electing to repay by practice shall notify the Commissioner in writing of his proposed practice location not more than 30 days following beginning of employment. Written approval of the practice location will be sent the recipient by the Commissioner. A recipient will receive one year of credit toward fulfillment of his scholarship application for each 12 months of full-time (minimum of 40 hours per week) continuous practice. Absences from practice in excess of 7 weeks per 122 month practice period for maternity leave, illness, vacation, and/or any other purpose shall not be credited toward repayment and will extend the recipient's total obligation by the number of weeks of excess absence. Any recipient who partially completes a scholarship obligation will be required to fulfill the remainder of the scholarship obligation by cash repayment in accordance with subdivision C of this section. Credit for partial years of service will be applied toward fulfillment of the scholarship obligation.

C. Cash Repayment.

Cash repayment by recipients who terminate their contracts prior to the completion of training shall be made in accordance with subdivisions D and E of § 4.1 and by recipients who become disabled before fulling the practice obligation in accordance with subdivision F of § 4.1. Cash repayments by recipients who otherwise fail or refuse to fulfill their practice obligation shall be made in accordance with subdivisions H and I of § 4.1.

D. Cash Repayment Amount.

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

E. Cash Repayment Schedule.

Any scholarship to be repaid in cash payments due to the recipient's failure to enter into an approved practice shall be repaid within two years of the date contract obligation should commence. Any scholarship to be repaid in cash payment due after partial repayment by practice shall be paid within two years of the recipient's departure from his approved practice. Failure of any recipient to complete a schedule of cash repayments within the required two years or to enter the nurse practitioner/nurse midwife practice in a medically underserved area, shall be cause for the Advisory Committee to refer the matter to the Attorney General for disposition. The Attorney General shall take such action as the Attorney General deems proper to assure reimbursement to the Commonwealth. If court action is required to collect a delinquent scholarship account, the recipient shall be responsible for the court costs.

PART V.

RECORDS AND REPORTING.

§ 5.1. Reporting Requirements.

Reporting requirements of nurse practitioner/nurse midwifery schools and scholarship recipients are as follows:

1. Each nurse practitioner/nurse midwife school shall maintain accurate records of the status of scholarship recipients until the recipients graduate and during any postgraduate year that a scholarship is awarded. The schools shall provide a report listing the academic status of each recipient annually to the Nursing Scholarship Committee.

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

3. The Nursing Scholarship Committee will report annually to the Board the following: number of applicants for scholarships, number of scholarships awarded, number of Virginia residents awarded scholarships, number of minorities and students from medically underserved areas awarded scholarships, total funding awarded, the practice sites of former scholarship recipients, and the number of students making monetary repayment of scholarship with reasons for failure to practice identified.

VA.R. Doc. No. R93-656; Filed June 29, 1993, 4 p.m.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: **VR 375-01-01:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Dates: June 24, 1993, through June 23, 1994.

Preamble:

The Board for Hearing Aid Specialists intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of hearing aid specialists in Virginia.

Pursuant to the Administrative Process Act, the Board for Hearing Aid Specialists is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 23, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 23, 1993

VR 375-01-01:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Hearing Aid Specialists (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-590; Filed June 24, 1993, 2:27 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

REGISTRAR'S NOTICE: Due to its length, the following regulation (VR 425-02-11) filed by the Department of Labor and Industry is not being published. However, in

accordance with § 9-6.14:22 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, Room 262, Richmond, Virginia 23219, and at the Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, Virginia 23219.

Title of Regulation: **VR 425-02-11. Virginia Occupational Safety and Health Administrative Regulations Manual.**

Statutory Authority: §§ 40.1-2.1, 40.1-6(3), 40.1-6(7), 40.1-6(9), 40.1-22(4), 40.1-22(5), 40.1-22(6a), 40.1-49.4D, and 40.1-51 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Summary:

Chapter 777 of the 1992 session of the General Assembly amended the Code of Virginia by raising the maximum penalty levels for violations of VOSH standards and changed the court of jurisdiction for hearing employer contests of VOSH citations from general district court to circuit court.

The number of informal conferences and contested cases have risen sharply since the change in penalty level. Informal conferences in FY 90 and FY 91 averaged 42.4 and 39.8 per month respectively. For FY 93 the rate is 70.3 informal conferences per month. Already in the first 8 months of this fiscal year, the Department has held more informal conferences than in any of the last three years. The contested case rate per month has shown a corresponding increase. In FY 90 and FY 91 we averaged 11.9 and 13.8 contested cases per month, respectively. This fiscal year we are averaging 26.5 contested cases a month.

The current provisions in the ARM allow the Commissioner to delay initiation of judicial proceedings on contested cases for up to ten working days, if the Commissioner determines that settlement appears probable. Prior to the increase in penalties for violations and the subsequent increase in requests for informal conferences and contests, the ten working days was sufficient to allow settlement to be reached on most cases. In addition, prior to the change in court jurisdiction, employers could represent themselves in general district court. With the increase in requests for informal conferences and contests, the ten working days allowed in the ARM does not give the employer adequate time to resolve disagreement with the violations cited. Moreover, referral to the Commonwealth's Attorney after ten working days to initiate judicial proceedings now requires the employer to hire an attorney since jurisdiction now rests with the circuit rather than general district courts.

A recent court decision has held that an employer was prejudiced by a delay in bringing suit with the result that the suit was dismissed. It is possible that numerous cases already under contest and cases resulting from inspections now in progress could be dismissed for exceeding the ten working days allowed for initiating judicial proceedings in the ARM. The court decision and the provision in the ARM under consideration will make it very difficult to maintain an effective occupational safety and health program.

The proposed change in the ARM is required to allow employers adequate time to resolve disagreements with citations without incurring the costs of attorneys fees; will allow hazards to be abated more promptly through negotiated settlements rather than experiencing long delays encountered in judicial proceedings; and will avoid the dismissal of numerous cases for exceeding ten working days for settlement allowed in the regulation. An emergency regulation is required to maintain an effective occupational safety and health program.

This emergency regulation is designated as VR 425-02-11 of the Department of Labor and Industry. The regulation shall become effective on filing with the Registrar of Regulations and expires on June 30, 1994 or upon the effective date of the permanent regulation, whichever occurs first. This emergency regulation will amend the existing regulation covering this area.

The Department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision to this emergency regulation.

IT IS SO ORDERED BY:

/s/ Carol Amato, Commissioner
Department of Labor and Industry
Date: June 22, 1993

/s/ Thomas A. Bryant
Chairman, Safety and Health Codes Board
Date: June 21, 1993

APPROVED BY:

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor
Date: June 18, 1993

FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 28, 1993

VA.R. Doc. No. R93-601; Filed June 28, 1993, 1:07 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A & B).**
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C).
VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement 1 to Attachment 3.1 C).
VR 460-04-3.1300. Outpatient Physical Rehabilitative Services Regulations.
VR 460-04-8.10. Regulations for Long-Stay Acute Care Hospitals.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Dates: June 29, 1993, through June 28, 1994.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Criteria for Preadmission Screening. This regulation will provide the agency with the regulatory authority to administer the preadmission screening criteria for admission to either Personal Care services or to nursing facility services.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Criteria for Preadmission Screening and Continued Stay. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: June 22, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 24, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. FILED WITH:

s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

6. BACKGROUND: The sections of the State Plan for Medical Assistance modified by this action are "Narrative for the Amount, Duration, and Scope of Services" (Attachment 3.1 A & B, Supplement 1); "Standards Established and Methods Used to Assure High Quality Care" (Attachment 3.1-C); and "Nursing Facility Care Criteria" (Supplement 1 to Attachment 3.1-C). The non-State Plan regulations affected are Outpatient Physical Rehabilitative Services (VR 460-04-3.1300) and Long-stay Acute Care Hospitals (VR 460-04-8.10).

Nursing Home Preadmission Screening and Nursing Facility Criteria ("Standards Established and Methods Used to Assure High Quality Care" (Attachment 3.1-C)); and "Nursing Facility Care Criteria" (Supplement 1 to Attachment 3.1-C)

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these Criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 - June 18, 1993. DMAS held 4 public hearings in different statewide locations and received numerous comments from individuals and organizations. The proposed regulations are substantially similar to the current emergency regulations. Commenters on the current emergency regulations have expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the Department's research has demonstrated that there have not been discharges from nursing facilities based on the current emergency regulations, it is clear that the Department's intent to clarify medical/nursing management has not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to the Code of Virginia § 9-6.14:4.1 et seq. (Administrative Process Act (APA)), DMAS must reinitiate the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements and is therefore required to promulgate another emergency regulation.

Due to the significant comments DMAS has received concerning the current emergency regulations, this second set of emergency regulations contains revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future but for the provision of community-based services. In these superseding emergency regulations, DMAS establishes the criteria which define when an

individual can be determined to be at-risk of nursing facility placement in the near future as "pre-nursing facility criteria".

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 Home and Community-Based Care alternative to nursing home care includes personal care, respite care, and adult day health care services.

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.

Long-term care is the fastest growing expense in Medicaid's budget. Nursing home preadmission screening is the mechanism designed to prevent inappropriate utilization of Medicaid-funded long-term care services. The goal of Nursing Home Preadmission Screening is to assess an individual's need for long term care services. About 1982, DMAS originally developed criteria for nursing facility care based upon the Long-Term Care Information Assessment Process (DMAS-95). These criteria enabled physicians, nursing home preadmission screening committees, medical review teams, and hospital and nursing facility discharge personnel to apply standards for facility admission consistently. Any individual whose care needs did not meet these criteria did not qualify for Medicaid-funded nursing facility services.

The Code of Virginia § 32.1-330 designates that the definition for eligibility to community based services will be included in the State Plan for Medical Assistance. Previous State Plan nursing facility criteria have always required an evaluation of both an individual's functional and nursing needs; however, regulations in existence before the current emergency regulations contained conflicting language. One section indicated that both functional capacity and nursing needs had to be met in order to authorize nursing facility level of care. Another section stated that the individual could be determined appropriate for nursing facility care when they met a category of functional dependency. The current emergency regulations and this emergency regulation remove this confusion by stating clearly that both functional dependency and medical and nursing needs must be present and that imminent risk of institutionalization must be documented in order for an individual to qualify for nursing facility care.

Another difficulty with the previous regulations was the lack of definition of medical and nursing need. In the previous pre-admission screening regulations, nursing needs were defined only by example of the types of nursing services which indicate a need for nursing facility care. The previous emergency regulation added a definition for medical and nursing need which was widely misinterpreted by the screening community as requiring that the person need a skilled nursing procedure. The emergency regulation revises the definition for medical and nursing needs which was added in the previous emergency regulation to clarify the need for nursing/medical supervision as well as several of the types of services which are provided by licensed nursing or professional personnel.

This emergency 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 evaluation section clarifies specific criteria for determining when an individual is at risk of nursing home placement and can be authorized for community-based care placement. In addition language has been added which defines when an individual can be determined to be in need of nursing facility services in the near future but for the provision of community-based services. This definition is termed "pre-nursing facility criteria" and describes those individuals whose care needs exceed what can typically be provided by existing community resources and which, if not met, will result in the individual's need for nursing facility placement.

The Omnibus Budget Reconciliation Act (OBRA) of 198' required that states specify a resident assessment instrument by which all nursing facility residents were to be assessed. The Commonwealth proposed that the pre-admission screening assessment instrument be that instrument for Virginia but the Health Care Financing Administration (HCFA) did not approve its use. Therefore, effective March 27, 1991, Virginia implemented HCFA's Resident Assessment Instrument (RAI) as the official state instrument. The Minimum Data Set (MDS) is a component of the RAI. The MDS achieves the federally mandated purpose of resident assessment for the purpose of care planning. In addition, to reduce paperwork demands of nursing facility providers, DMAS has also adopted its use for continued stay evaluations to replace the pre-admission screening instrument.

The criteria based on the MDS mirror the criteria in the pre-admission screening instrument. Even though it was not possible to match all items between the two forms exactly, efforts were made to accommodate variations in criteria items to the extent possible. The data analysis indicates that there is no significant difference between the two assessment instruments.

Nursing Home Preadmission Screening Committees will still use a separate assessment instrument for pre-admission screening, the purpose of which is to determine appropriate medical care needs and proper placement in the continuum of care between community services and institutionalization.

Rehabilitation Services

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

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 non-covered 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 Appropriations 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.

Attachment 3.1 C

The modification to outpatient rehabilitative services is also reflected in this Attachment. DMAS will periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. This is changed from the requirement that assessments be conducted annually. The change to recognize the provision of psychological services by supervised licensed clinical social workers is also reflected in this Plan section.

VR 460-04-3.1300

The reference to the Rehabilitation Treatment Authorization form (DMAS-125) is deleted for outpatient rehabilitative services.

Supervision of Licensed Clinical Social Workers

VR 460-04-8.10 (Long-stay Acute Care Hospital Regulations)

The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in these state-only regulations.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

In 1982, the Code of Virginia § 32.1-327.2 was revised to require preadmission screening for all individuals who will be eligible for community or institutional long-term care (revised in 1985 in Code of Virginia § 32.1-330). The Code of Federal Regulations, Title 42, Part 483, requires states to ensure that nursing facility residents meet criteria for nursing facility care.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the June 30, 1993, effective date needed by the Department because of the transition to the new administrative rule making requirements.

8. FISCAL/BUDGETARY IMPACT: The state implemented the clarifications included in these regulations under emergency regulations effective September 1, 1992. The intended impact of these regulations is to allow continued consistency in application of the nursing facility criteria and the Department's ability to be sustained in actions appealed based upon clear and consistent regulations. The only cost impact related to these regulations was the cost of statewide training for nursing home pre-admission screening teams and providers and these costs were covered through training registration fees. DMAS routinely issues policy manual updates, so there is no cost impact ascribed to these regulations related to policy revisions. Nursing Home Pre-Admission screening teams are the entities primarily affected by this regulatory clarification. DMAS is working closely with these entities to ensure clear understanding and consistent application of the nursing facility criteria. DMAS is monitoring closely all individual Medicaid recipients who may be affected by these regulations and will report the results of this monitoring to the Secretary of Human Resources to determine whether the regulations have any adverse impact on Medicaid recipients prior to the finalization of these proposed regulations.

The technical amendments included in the package are effecting no new reimbursement methodology changes. Therefore, there is no fiscal impact attached to these changes.

9. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective June 30, 1993, once adopted and filed with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until

superseded by final regulations promulgated through the APA, whichever occurs first. Without an effective emergency regulation, the Department would lack the authority to administer these criteria for preadmission screening for individuals' admission to all long-term care services.

10. Approval Sought for VR 460-03-3.1100, 460-02-3.1300, 460-03-3.1301, 460-04-3.1300, 460-04-8.10.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

VR 460-03-3.1100. Amount, Duration and Scope of Services.

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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.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

1. Are furnished to outpatients;

2. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and

3. Are furnished by an institution that:

a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

~~3. 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.

Pages 6, 7, and 8

D. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

4c. Family planning services and supplies for individuals of child-bearing age.

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 *, or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical .*

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. Optometrists' services.

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.

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1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs.

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually *without authorization* . Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitiv medical and skilled nursing care; and

6. Services related to cosmetic surgery.

§ 8. Private duty nursing services.

Not provided.

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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, *school divisions,* or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~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~~ . *Documentation for medical justification must include physician orders or a plan of care signed 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.

Pages 23 and 24

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.

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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.e)~~

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;

2. Serious impairment of bodily functions; or

3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency critieria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

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

3. The Department of Medical Assistance Services shall *periodically* conduct ~~at least annually~~ a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician

must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

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(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning;

(15) Family or caregiver training; and

(16) Infection control.

D. *Intermediate Care* Facilities for the Mentally Retarded ~~(FMR)~~ *(ICF/MR)* and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ~~FMR~~ *ICF/MR* or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

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2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* ;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social work.

Social work services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational therapy.

Recreational therapy are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

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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~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440 110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(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.

§ 11.5. Authorization for services.

A. ~~General physical rehabilitative~~ *Physical therapy, occupational therapy, and speech-language pathology* services provided in outpatient settings of acute and rehabilitation hospitals ~~and by~~ , rehabilitation agencies , *home health agencies, or school divisions* shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting , *home health agency, school division,* or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

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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. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-03-3.1301. Nursing Facility and MR Criteria.

PART I.
NURSING FACILITY CRITERIA.

~~§ 1.~~ *§ 1.1.* ~~Nursing facility criteria;~~ INTRODUCTION.

A. ~~Traditionally, the model for nursing facility care has been facility or institutionally based; however, it is important to recognize that nursing facility care services can be delivered outside a nursing home. Nursing facility care is the provision of services regardless of the specific setting. It is the care rather than the setting in which it is rendered that is significant.~~ *Medicaid-funded long-term care services may be provided in either a nursing facility or community-based care setting.* The criteria for assessing *an individual's eligibility for Medicaid payment of* nursing facility care ~~are divided into~~ *consist of* two ~~areas~~ *components* : (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) *medical or* nursing needs. *The*

criteria for assessing an individual's eligibility for Medicaid payment of community-based care consist of three components: 1. functional capacity (the degree of assistance an individual requires to complete activities of daily living), 2. medical or nursing needs and 3. the individual's risk of nursing facility placement in the absence of community-based waiver services.

1. In order to qualify for Medicaid payment for nursing facility care an individual must meet both functional capacity requirements and have a medical condition which requires ongoing medical or nursing management. An exception may be made when the individual does not meet the functional capacity requirement but the individual does have a health condition that requires the daily direct services of a licensed nurse that cannot be managed on an outpatient basis.

2. In order to qualify for Medicaid payment for Community-Based care an individual must either meet both the functional and medical components of the nursing facility criteria or meet the pre-nursing facility criteria defined in Section 2.2. In addition, the individual must be determined to be at risk of nursing facility placement unless services under the waiver are offered.

B. The preadmission screening process ~~marks the beginning of~~ *preauthorizes* a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. *Nursing Facilities' Preadmission Screenings to authorize Medicaid-funded long-term care are performed by teams composed by agencies contracted with the Department of Medical Assistance Services (DMAS). The authorization for Medicaid-funded long-term care may be rescinded by the nursing facility or community-based care provider or by DMAS at any point that the individual is determined not to meet the criteria for Medicaid-funded long-term care.* ~~Nursing facility~~ *Medicaid-funded long-term* care services are covered by the program for individuals whose needs meet the criteria established by program regulations. *Authorization of appropriate non-institutional services shall be evaluated before actual nursing facility placement is considered.*

C. *Prior to an individual's admission, the nursing facility must review the completed pre-admission screening forms to ensure that appropriate nursing facility admission criteria have been documented. The nursing facility is also responsible for documenting, upon admission and on an ongoing basis, that the individual meets and continues to meet nursing facility criteria. For this purpose, the nursing facility will use the Minimum Data Set (MDS .* The *post admission* assessment must be conducted no later than fourteen days after the date of admission and promptly after a significant change in the resident's physical or mental condition. *If at any time during the course of the resident's stay, it is determined that the resident does not meet nursing facility criteria as defined in the State Plan for Medical Assistance, the nursing facility must initiate discharge of such resident.* Nursing facilities must conduct a comprhensive, accurate, standardized, reproducible assessment of each resident's functional capacity *and medical and nursing needs.*

The Department of Medical Assistance Services shall conduct ~~validation~~ surveys of the assessments completed by nursing facilities to determine that services provided to the residents ~~are medically necessary~~ *meet nursing facility criteria* and that needed services are provided.

D. The community-based provider is responsible for documenting upon admission and on an ongoing basis that the individual meets the criteria for Medicaid-funded long-term care.

~~D.~~ *E.* The criteria for nursing facility care under the Virginia Medical Assistance Program are contained herein. An individual's need for care must meet ~~this~~ *these* criteria before any authorization for payment by Medicaid will be made for either institutional or non-institutional long-term care services. *The Nursing Home Pre-admission Screening team is responsible for documenting on the state-designated assessment instrument that the individual meets the criteria for nursing facility or community-based waiver services and for authorizing admission to Medicaid-funded long-term care. The rating of functional dependencies on the assessment instrument must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence.*

~~§ 2.~~ *§ 1.2.* PRE-ADMISSION SCREENING CRITERIA FOR NURSING FACILITY CARE.

A. *Functional dependency alone is not sufficient to demonstrate the need for nursing facility care or placement.*

B. Except as provided for in § 1.0 A, an individual may only be considered to meet the nursing facility ~~care shall be the provision of services for persons whose health needs require medical and nursing supervision or care. These services may be provided in various settings, institutional and noninstitutional.~~ *criteria when* both the functional capacity of the individual and his *medical or* nursing needs ~~must be considered in determining the appropriateness of care~~ *meet the following requirements . Even when an individual meets nursing facility criteria, placement in a noninstitutional setting shall be evaluated before nursing facility placement is considered.*

~~B.~~ *1. Functional capacity.*

a. When documented on a completed state-designated pre-admission screening assessment instrument which is completed in a manner consistent with the definitions of activities of daily living and directions provided by DMAS for th rating of those activities, individuals may t

considered ~~appropriate~~ *to meet the functional capacity requirements* for nursing facility care when one of the following describes their functional capacity.

~~1. rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Medication Administration (Item 10).~~

~~2.~~ *(1)* rated dependent in two to four of the Activities of Daily Living ~~(Items 1-7)~~ , and also rated semi-dependent or dependent in Behavior Pattern and Orientation ~~(Item 8)~~ , and semi-dependent in Joint Motion ~~(Item 11)~~ *or semi-dependent in Medication Administration* .

~~3.~~ *(2)* Rated dependent in five to seven of the Activities of Daily Living ~~(Items 1-7)~~ , and also rated dependent in Mobility.

~~4.~~ *(3)* Rated semi-dependent in two to seven of the Activities of Daily Living ~~(Items 1-7)~~ and also rated dependent in Mobility ~~(Item 9),~~ and Behavior Pattern and Orientation ~~(Item 8). An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse~~ .

§ ~~3. Functional status.~~

b. The rating of functional dependencies on the pre-admission screening assessment intrument must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence. The following abbreviations shall mean: I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

~~A.~~ *(1)* Bathing

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is bathed (D)

~~B.~~ *(2)* Dressing

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is dressed (D)

~~6.~~ *(f)* Is not dressed (D)

~~C.~~ *(3)* Toileting

~~1.~~ *(a)* Without help day and night (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Does not use toilet room (D)

~~D.~~ *(4)* Transferring

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Is transferred (D)

~~6.~~ *(f)* Is not transferred (D)

~~E.~~ *(5)* Bowel Function

~~1.~~ *(a)* Continent (I)

~~2.~~ *(b)* Incontinent less than weekly (d)

~~3.~~ *(c)* Ostomy - self-care (d)

~~4.~~ *(d)* Incontinent weekly or more (D)

~~5.~~ *(e)* Ostomy - not self-care (D)

~~F.~~ *(5)* Bladder Function

~~1.~~ *(a)* Continent (I)

~~2.~~ *(b)* Incontinent less than weekly (d)

~~3.~~ *(c)* External device - self-care (d)

~~4.~~ *(d)* Indwelling catheter - self-care (d)

~~5.~~ *(e)* Ostomy - self-care (d)

~~6.~~ *(f)* Incontinent weekly or more (D)

~~7.~~ *(g)* External device - not self-care (D)

~~8.~~ *(h)* Indwelling catheter - not self-care (D)

~~9.~~ *(i)* Ostomy - not self-care (D)

~~G.~~ *(7)* Eating/Feeding

~~1.~~ *(a)* Without help (I)

~~2.~~ *(b)* MH only (d)

~~3.~~ *(c)* HH only (D)

~~4.~~ *(d)* MH and HH (D)

~~5.~~ *(e)* Spoon fed (D)

~~6.~~ *(f)* Syringe or tube fed (D)

~~7.~~ *(g)* Fed by IV or clysis (D)

~~H.~~ *(8)* Behavior Pattern and Orientation

~~1.~~ *(a)* Appropriate or Wandering/Passive less than weekly + Oriented (I)

~~2.~~ *(b)* Appropriate or Wandering/Passive less than weekly + Disoriented - Some Spheres (I)

~~3.~~ *(c)* Wandering/Passive Weekly or More + Oriented (I)

~~4.~~ *(d)* Appropriate or Wandering/Passive less than weekly + Disoriented - All Spheres (d)

~~5.~~ *(e)* Wandering/Passive Weekly or more + Disoriented - Some or All Spheres (d)

~~6.~~ *(f)* Abusive/Aggressive/Disruptive less than weekly + Oriented or Disoriented (d)

~~7.~~ *(g)* Abusive/Aggressive/Disruptive weekly or more + Oriented (d)

~~8.~~ *(h)* Abusive/Aggressive/Disruptive weekly or more + Disoriented (D)

~~9.~~ *(9)* Mobility

~~a.~~ *(a)* Goes outside without help (I)

~~b.~~ *(b)* Goes outside MH only (d)

~~c.~~ *(c)* Goes outside HH only (D)

~~d.~~ *(d)* Goes outside MH and HH (D)

~~e.~~ *(e)* Confined - moves about (D)

~~f.~~ *(f)* Confined - does not move about (D)

~~10.~~ *(10)* Medication Administration

~~a.~~ *(a)* No medications (I)

~~b.~~ *(b)* Self administered - monitored less than weekly (I)

~~c.~~ *(c)* By lay persons, monitored less than weekly (I)

~~d.~~ *(d)* By Licensed/Professional nurse and/or monitored weekly or more (D)

~~e.~~ *(e)* Some or all by Professional nurse (D)

~~11.~~ *(11) Joint Motion*

~~a.~~ *(a)* Within normal limits (I)

~~b.~~ *(b)* Limited motion (d)

~~c.~~ *(c)* Instability - corrected (I)

~~d.~~ *(d)* Instability - uncorrected (D)

~~e.~~ *(e)* Immobility (D)

§ ~~4.0~~ *2.* ~~Nursing needs~~ *Medical or nursing needs* .

~~A.~~ *a. An individual with medical or nursing needs is an individual whose health needs require medical or nursing supervision or care above the level which could be provided through assistance with Activities of Daily Living, Medication Administration and general supervision and is not primarily for the care and treatment of mental diseases. Medical or nursing supervision or care beyond this level is required when any one of the following describes the individual's need for medical or nursing supervision:*

(1) the individual's medical condition requires observation and assessment to assure evaluation of the person's need for modification of treatment or additional medical procedures to prevent destabilization and the person has demonstrated an inability to self observe and/or evaluate the need to contact skilled medical professionals; or

(2) due to the complexity created by the person's multiple, interrelated medical conditions, the potential for the individual's medical instability is high or medical instability exists; or

3. The individual requires at least one ongoing medical/nursing service. The following is a non exclusive list of medical/nursing services which may, but need not necessarily, indicate a need for medical or nursing supervision or care:

~~1.~~ *(a)* Application of aseptic dressings;

~~2.~~ *(b)* Routine catheter care;

~~3.~~ *(c)* ~~Inhalation~~ *Respiratory* therapy ~~after th~~

~~regimen has been established;~~

~~4.~~ *(d)* Supervision for adequate nutrition and hydration for ~~patients~~ *individuals* who ; ~~due to physical or mental impairments, are subject to~~ *show clinical evidence of malnourishment or dehydration or have recent history of weight loss or inadequate hydration which, if not supervised would be expected to result in* malnourishment or dehydration;

~~5. Routine care in connection with plaster casts, braces, or similar devices;~~

~~6. Physical, occupational, speech, or other therapy;~~

~~7.~~ *(e)* ~~Therapies,~~ *Therapeutic* exercise and positioning ~~to maintain or strengthen muscle tone, to prevent contractures, decubiti, and wheelchair supports~~ ;

~~8.~~ *(f)* Routine care of colostomy or ileostomy *or management of neurogenic bowel and bladder* ;

~~9.~~ *(g)* Use of *physical (e.g. side rails, poseys, locked wards) and/or chemical* restraints ~~including bedrails, soft binders, and wheelchair supports~~ ;

~~10.~~ *(h)* Routine skin care to prevent ~~decubiti~~ *pressure ulcers for individuals who are immobile* ;

~~11.~~ *(i)* Care of small uncomplicated ~~decubiti~~ *pressure ulcers* , and local skin rashes; or

~~12.~~ *(j)* ~~Observation~~ *Management* of those with sensory, metabolic, ~~and~~ *or* circulatory impairment ~~for potential~~ *with demonstrated clinical evidence of* medical ~~complications~~ *instability;*

(k) Chemotherapy;

(l) Radiation;

(m) Dialysis;

(n) Suctioning;

(o) Tracheostomy care;

(p) Infusion therapy;

(q) Oxygen.

b. even when an individual meets nursing facility criteria, provision of services in a noninstitutional setting shall be considered before nursing facility placement is sought.

§ 1.3. SUMMARY OF PRE-ADMISSION NURSING FACILITY CRITERIA.

A. An individual shall be determined to meet the nursing facility criteria when:

1. the individual has both limited functional capacity and requires medical or nursing management according to the requirements of Section 2.0, or

2. the individual is rated dependent in some functional limitations, but does not meet the functional capacity requirements, and the individual requires the daily direct services or supervision of a licensed nurse that cannot be managed on an outpatient basis (e.g., clinic, physician visits, home health services).

B. An individual shall not be determined to meet nursing facility criteria when one of the following specific care needs solely describes his or her condition:

1. An individual who requires minimal assistance with activities of daily living, including those persons whose only need in all areas of functional capacity is for prompting to complete the activity;

2. An individual who independently uses mechanical devices such as a wheelchair, walker, crutch, or cane;

3. An individual who requires limited diets such as a mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;

4. An individual who requires medications that can be independently self-administered or administered by the caregiver;

5. An individual who requires protection to prevent him from obtaining alcohol or drugs or to address a social/environmental problem;

6. An individual who requires minimal staff observation or assistance for confusion, memory impairment, or poor judgment;

7. An individual whose primary need is for behavioral management which can be provided in a community-based setting.

§ 1.4. EVALUATION TO DETERMINE ELIGIBILITY FOR MEDICAID PAYMENT OF NURSING FACILITY OR HOME AND COMMUNITY-BASED CARE SERVICES.

A. The screening team shall not authorize Medicaid-funded nursing facility services for any individual who does not meet nursing facility criteria. One the nursing home preadmission screening team has determined whether or not an individual meets the nursing facility criteria, the screening team must determine the most appropriate and cost-effective means of meeting the needs of the individual. The screening team must document a complete assessment of all the resources available for that individual in the community (i.e., the immediate family, other relatives, other community resources and other

services in the continuum of long-term care which are less intensive than nursing facility level of care services). The screening team shall be responsible for preauthorizing Medicaid-funded long-term care according to the needs of each individual and the support required to meet those needs. The screening team shall authorize Medicaid-funded nursing facility care for an individual who meets the nursing facility criteria only when services in the community are either not a feasible alternative or the indiviudal or the individual's representative rejects the screening team's plan for community services. The screening team must document that the option of community-based alternatives has been explained, the reason community-based services were not chosen, and have this document signed by the client or client's primary caregivers.

B. The screening team shall authorize community-based waiver services only for an individual who:

1. meets the nursing facility criteria and is at risk of nursing home placement without waiver services. Waiver services are offered to such an individual as an alternative to avoid nursing facility admission or

2. Meets the following Pre-Nursing facility criteria and is at risk of nursing home placement without waiver services. Waiver services are offered to such an individual as a preventive service to delay or avoid nursing facility admission which would be required in the near future if community-based care is not offered. The Pre-Nursing Facility criteria are:

a. The individual rated dependent in four of the activities of daily living and also rated dependent in mobility and has a need for medical or nursing supervision, or

b. The individual meets the functional dependency component of the nursing facility criteria but lacks a medical or nursing need.

C. Federal regulations which govern Medicaid-funded home and community-based services require that services only be offered to individuals who would otherwise require institutional placement in the absence of home and community-based services. The determination that an indiviudal would otherwise require placement in a nursing facility is based upon a finding that the individual's current condition and available support are insufficient to enable the individual to remain in the home and thus the individual is at risk of institutionalization if community-based care is not authorized. The determination of the individual's risk of nursing facility placement shall be documented either on the state-designated pre-admission screening assessment or in a separate attachment for every individual authorized to receive community-based waiver services. To authorize community-based waiver services, the screeing team must document that the individual is at risk of nursing facility placement by finding that one of the following conditions is met:

1. application for the individual to a nursing facility has been made and accepted;

2. the individual has been cared for in the home prior to the assessment and evidence is available demonstrating a deterioration in the individual's health care condition or a change in available support preventing former care arrangements from meeting the individual's need. Examples of such evidence may be, but shall not necessarily be limited to:

a. recent hospitalizations,

b. attending physician documentation, or

c. reported findings from medical or social service agencies.

3. there has been no change in condition or available support but evidence is available that demonstrates the individual's functional, medical and nursing needs are not being met. Examples of such evidence may be, but shall not necessarily be limited to:

a. recent hospitalizations,

b. attending physician documentation, or

c. reported findings from medical or social service agencies.

§ 1.5. CRITERIA FOR CONTINUED NURSING FACILITY CARE USING THE MINIMUM DATA SET (MDS).

Individuals may be considered appropriate for nursing facility care when one of the following describes their medical or nursing needs and functional capacity as recorded on the Minimum Data Set (MDS) of the Resident Assessment Instrument that is specified by the Commonwealth:

A. Functional Capacity.

1. The individual meets criteria for two to four of the Activities of Daily Living, plus Behavior and Orientation, and Joint Motion; or

2. The individual meets criteria for five to seven of the Activities of Daily Living and also for Locomotion; or

3. The individual meets criteria for two to seven of the Activities of Daily Living and also for Locomotion, and Behavior and Orientation. An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.

B. Medical or Nursing Needs.

The individual has health needs which require medica

or nursing supervision or care above the level which could be provided through assistance with activities of daily living, medication administration and general supervision and is not primarily for the care and treatment of mental diseases.

§ 1.6. DEFINITIONS TO BE APPLIED WHEN COMPLETING THE MDS

A. Activities of Daily Living (ADLs).

1. Transfer (subdivision E(1)(b)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

2. Dressing (E(1)(d)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

3. Eating (E(1)(e)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period, or

g. To meet this ADL, one of the following is checked:

(1) Subdivision L 4 a Parenteral or intravenous

(2) Subdivision L 4 b Feeding tube

(3) Subdivision L 4 c Syringe (oral feeding)

4. Toilet Use (subdivision E 1 f). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

5. Bathing (subdivision E 3 a). To meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - no help provided.

b. (1) Supervision - oversight help only

c. (2) Physical help limited to transfer only

d. (3) Physical help in part of bathing activity

e. (4) Total dependence

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

6. Bladder continence (subdivision F 1 b). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - incontinent episodes once a week or less

c. (2) Occasionally incontinent - 2+ times a week but not daily

d. (3) Frequently incontinent - tended to be incontinent daily, but some control present (e.g., on day shift)

e. (4) Incontinent - Had inadequate control; multiple daily episodes or

f. To meet this ADL, one of the following is checked:

(1) Subdivision F 3 b external cathether

(2) Subdivision F 3 c indwelling catheter

7. Bowel continence (subdivision F 1 a). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - control problems less than weekly

c. (2) Occasionally incontinent - once a week

d. (3) Frequently incontinent - 2-3 times a week

e. (4) Incontinent - Had inadequate control all (or almost all) of the time, or

f. To meet this ADL, Subdivision F 3 h, ostomy is checked.

B. Joint motion (subdivision E 4).

In order to meet this category, at least one of the following must be checked:

1. Subdivision E 4 c - Contracture to arms, legs, shoulders, or hands

2. Subdivision E 4 d - Hemiplegia/hemiparesis

3. Subdivision E 4 e - Quadriplegia

4. Subdivision E 4 f - Arm - partial or total loss of voluntary movement

5. Subdivision E 4 g - Hand - lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid)

6. Subdivision E 4 h - Leg - partial or total loss of voluntary movement

7. Subdivision E 4 i - Leg - unsteady gait

8. Subdivision E 4 j - Trunk - partial or total loss of ability to position, balance, or turn body

C. Locomotion (subdivision E 1 c).

In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 in this category:

1. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

2. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

3. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

4. (3) Extensive assistance - While resident performed part of activity over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

5. (4) Total dependence - Full staff performance of activity during entire 7 days

6. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

D. Nursing Observation.

In order to meet this category, at least one of the following must be checked:

1. Subdivision N 4 a - Open lesions other than stasis or pressure ulcers (e.g., cuts)

2. Subdivision N 4 f - Wound care or treatment (e.g., pressure ulcer care, surgical wound)

3. Subdivision N 4 g - Other skin care or treatment

4. Subdivision P 1 a - Chemotherapy

5. Subdivision P 1 b - Radiation

6. Subdivision P 1 c - Dialysis

7. Subdivision P 1 d - Suctioning

8. Subdivision P 1 e - Tracheostomy care

9. Subdivision P 1 f - Intravenous medications

10. Subdivision P 1 g - Transfusions

11. Subdivision P 1 h - Oxygen

12. Subdivision P 1 i - Other special treatment or procedure

E. Behavior and Orientation.

In order to meet this category, the individual must meet at least one of the categories for both behavior and orientation.

1. Behavior. To meet the criteria for behavior, the individual must meet at least one of the following:

a. Subdivision H 1 d - Failure to eat or take medications, withdrawal from self-care or leisure activities (must be checked), or

b. One of the following is coded 1 (behavior of this type occurred less than daily) or 2 (behavior of this type occurred daily or more frequently):

(1) Subdivision H 3 a - Wandering (moved with no rational purpose, seemingly oblivious to needs or safety)

(2) Subdivision H 3 b - Verbally abusive (others were threatened, screamed at, cursed at)

(3) Subdivision H 3 c - Physically abusive (others were hit, shoved, scratched, sexually abused)

(4) Subdivision H 3 d - Socially inappropriate/disruptive behavior (made disrupting sounds, noisy, screams, self-abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)

2. Orientation. To meet this category, the individual must meet at least one of the following:

a. Subdivision B 3 d - Awareness that individual is in a nursing home - is not checked;

b. Subdivision B 3 e - None of the memory/recall ability items are recalled - must be checked; or

c. Subdivision B 4 - Cognitive skills for daily decision making - must be coded with a 2 (moderately impaired - decisions poor; cues/supervision required) or 3 (severely impaired - never/rarely made decisions).

§ ~~1.7. Adult specialized care criteria.~~

PART II.
ADULT SPECIALIZED CARE CRITERIA.

~~A.~~ *§ 2.1.* General description.

The resident must have long-term health conditions requiring close medical supervision, 24 hours licensed nursing care, and specialized services or equipment.

~~B.~~ *§ 2.2.* Targeted population.

The following individuals comprise the targeted population:

1. Individuals requiring mechanical ventilation;

2. Individuals with communicable diseases requiring universal or respiratory precautions;

3. Individuals requiring ongoing intravenous medication or nutrition administration; or

4. Individuals requiring comprehensive rehabilitative therapy services.

~~C.~~ *§ 2.3.* Criteria.

~~1.~~ *A.* The individual must require at a minimum:

~~a.~~ *1.* Physician visits at least once weekly;

~~b.~~ *2.* Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the resident resides, 24 hours a day, whose sole responsibility is the designated unit); and

~~c.~~ *3.* Coordinated multidisciplinary team approach to meet needs.

~~2.~~ *B.* In addition, the individual must meet one of the following requirements:

~~a.~~ *1.* Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of four therapy sessions (minimum of 30 minutes per session) per day, five days per week; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

~~b.~~ *2.* Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

~~c.~~ *3.* ~~Individuals that~~ *Must* require at least one of the following special services:

~~(1)~~ *a.* Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

~~(2)~~ *b.* Special infection control precautions (universal or respiratory precaution; this does not include handwashing precautions only);

~~(3)~~ *c.* Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

~~(4)~~ *d.* Daily respiratory therapy treatments that must be provided by a skilled nurse or a respiratory therapist;

~~(5)~~ *e.* Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed, second or third degree burns covering more than 10% of the body);

~~(6)~~ *f.* Multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

§ 8. ~~Pediatric/adolescent specialized care criteria.~~

PART III.
PEDIATRIC AND ADOLESCENT SPECIALIZED CARE CRITERIA.

~~A.~~ *§ 3.1.* General description.

The child must have ongoing health conditions requiring close medical supervision, 24 hours licensed nursing supervision, and specialized services or equipment. The recipient must be age 21 or under.

~~B.~~ *§ 3.2.* Targeted population.

The following individuals comprise the targeted population:

1. Children requiring mechanical ventilation;

2. Children with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.);

3. Children requiring ongoing intravenous medication or nutrition administration;

4. Children requiring daily dependence on devise based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);

5. Children requiring comprehensive rehabilitative therapy services;

6. Children with terminal illness.

~~B.~~ *§ 3.3.* Criteria.

~~1.~~ *A.* The child must require at a minimum:

~~a.~~ *1.* Physician visits at least once weekly;

~~b.~~ *2.* Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit);

~~c.~~ *3.* Coordinated multidisciplinary team approach to meet needs;

~~d.~~ *4.* The nursing facility must provide for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of two hours per day, minimum.

~~2.~~ *B.* In addition, the child must meet one of the following requirements:

~~a.~~ *1.* Must require two out of three of the following physical rehabilitative services: Physical therapy, Occupational therapy, Speech-pathology services; therapy must be provided at a minimum of six therapy sessions (minimum of 15 minutes per session) per day, five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

~~b.~~ *2.* Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc.; or

~~c.~~ *3.* ~~Children that~~ *Must* require at least one of the following special services:

~~(1)~~ *a.* Ongoing administration of intravenous medications or nutrition (i.e., TPN, antibiotic therapy, narcotic administration, etc.);

~~(2)~~ *b.* Special infection control precautions (universal or respiratory precaution; this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

~~(3)~~ *c.* Dialysis treatment that is provided within the facility (i.e., peritoneal dialysis);

~~(4)~~ *d.* Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

~~(5)~~ *e.* Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e., grade IV decubiti; large surgical wounds that cannot be closed; second or third degree burns covering more than 10% of the body);

~~(6)~~ *f.* Ostomy care requiring services by a licensed nurse;

~~(7)~~ *g.* Care for terminal illness.

~~§ 9. Criteria for care in facilities for mentally retarded persons.~~

PART IV.
CRITERIA FOR CARE IN FACILITIES FOR MENTALLY RETARDED PERSONS.

~~A.~~ *§ 4.1.* Definitions.

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

"No assistance" means no help is needed.

"Prompting/structuring" means prior to the functioning, some verbal direction or some rearrangement of the environment is needed.

"Supervision" means that a helper must be present during the function and provide only verbal direction, gestural prompts, or guidance.

"Some direct assistance" means that a helper must be present and provide some physical guidance/support (with or without verbal direction).

"Total care" means that a helper must perform all or nearly all of the functions.

"Rarely" means that a behavior occurs quarterly or less.

"Sometimes" means that a behavior occurs once a month or less.

"Often" means that a behavior occurs two to three times a month.

"Regularly" means that a behavior occurs weekly or more.

~~B.~~ *§ 4.2. Utilization control.*

Utilization control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been

institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.

~~C.~~ *§ 4.3. Purpose.*

The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.

~~D.~~ *§ 4.4. Care in MR facilities.*

Care in facilities for the mentally retarded requires planned programs for habilitative needs or health related services which exceed the level of room, board, and supervision of daily activities.

Such care shall be a combination of habilitative, rehabilitative, and health services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task-learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.

~~E.~~ *§ 4.5. Evaluation.*

The evaluation and re-evaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expections of the resident's capabilities, the appropriateness of programming, and whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.

~~§ 10.~~ *§ 4.6.* Patient assessment criteria.

~~A.~~ The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan of care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized into seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.

~~B.~~ *§ 4.7. Dependency level.*

The resident must meet the indicated dependency level in two or more of categories 1 through 7.

~~1.~~ *A.* Health Status - To meet this category:

~~a.~~ *1.* Two or more questions must be answered with a 4, or

~~b.~~ *2.* Question "j" must be answered "yes."

~~2.~~ *B.* Communication Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

~~3.~~ *C.* Task Learning Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

~~4.~~ *D.* Personal Care - To meet this category:

~~a.~~ *1.* Question "a" must be answered with a 4 or a 5, or

~~b.~~ *2.* Question "b" must be answered with a 4 or a 5, or

~~c.~~ *3.* Questions "c" and "d" must be answered with a 4 or a 5.

~~5.~~ *E.* Mobility - To meet this category:

Any one question must be answered with a 4 or a 5.

~~6.~~ *F.* Behavior - To meet this category:

Any one question must be answered with a 3 or a 4.

~~7.~~ *G.* Community Living - To meet this category:

~~a.~~ *1.* Any two of the questions "b," "e," or "g" must be answered with a 4 or a 5, or

~~b.~~ *2.* Three or more questions must be answered with a 4 or a 5.

§ 4.8. Level of functioning survey.

~~1.~~ *A.* Health status.

How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

~~a.~~ *1.* Medication administration and/or evaluation for effectiveness of a medication regimen? .... 1...2...3...4

~~b.~~ *2.* Direct services: i.e. care for lesions, dressings,

treatments (other than shampoos, foot power, etc.) ..... 1...2...3...4

~~e.~~ *3.* Seizures control ..... 1...2...3...4

~~d.~~ *4.* Teaching diagnosed disease control and care, including diabetes ..... 1...2...3...4

~~e.~~ *5.* Management of care of diagnosed circulatory or respiratory problems ..... 1...2...3...4

~~f.~~ *6.* Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc. ..... 1...2...3...4

~~g.~~ *7.* Observation for choking/aspiration while eating, drinking? ..... 1...2...3...4

~~h.~~ *8.* Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. ..... 1...2...3...4

~~i.~~ *9.* Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity) ..... 1...2...3...4

~~j.~~ *10.* Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more ..... 1...2...3...4

~~2.~~ *B.* Communication.

Using the key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

~~a.~~ *1.* Indicate wants by pointing, vocal noises, or signs? ..... 1...2...3...4

~~b.~~ *2.* Use simple words, phrases, short sentences? ..... 1...2...3...4

~~c.~~ *3.* Ask for at least 10 things using appropriate names? ..... 1...2...3...4

~~d.~~ *4.* Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? ..... 1...2...3...4

~~e.~~ *5.* Speak in an easily understood manner? ..... 1...2...3...4

~~f.~~ *6.* Identify self, place of residence, and significant others? ..... 1...2...3...4

~~3.~~ *C.* Task learning skills.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

~~a.~~ *1.* Pay attention to purposeful activities for 5 minutes? ..... 1...2...3...4

~~b.~~ *2.* Stay with a 3 step task for more than 15 minutes? ..... 1...2...3...4

~~c.~~ *3.* Tell time to the hour and understand time intervals? ..... 1...2...3...4

~~d.~~ *4.* Count more than 10 objects? ..... 1...2...3...4

~~e.~~ *5.* Do simple addition, subtraction? ..... 1...2...3...4

~~f.~~ *6.* Write or print ten words? ..... 1...2...3...4

~~g.~~ *7.* Discriminate shapes, sizes, or colors? . 1...2...3...4

~~h.~~ *8.* Name people or objects when describing pictures? ..... 1...2...3...4

~~i.~~ *9.* Discriminate between "one," "many," "lot"? ..... 1...2...3...4

~~4.~~ *D.* Personal and self-care.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

~~a.~~ *1.* Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? ... 1...2...3...4...5

b. 2. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? 1...2...3...4...5

~~c.~~ *3.* Perform bathing function (i.e., bathe, runs bath, dry self, etc.)? ..... 1...2...3...4...5

~~5.~~ *E.* Mobility.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

~~a.~~ *1.* Move (walking, wheeling) around environment? ..... 1...2...3...4...5

~~b.~~ *2.* Rise from lying down to sitting positions, sits without support? ..... 1...2...3...4...5

~~c.~~ *3.* Turn and position in bed, roll over? 1...2...3...4...5

~~6.~~ *F.* Behavior.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, 4=Regularly)

~~a.~~ *1.* Engage in self destructive behavior? . 1...2...3...4

~~b.~~ *2.* Threaten or do physical violence to others? ..... 1...2...3...4

e. 3. Throw things, damage property, have temper outbursts? ..... 1...2...3...4

d. 4. Respond to others in a socially unacceptable manner - (without undue anger, frustration or hostility) ..... 1...2...3...4

7. G. Community living skills.

With what type of assistance would this person currently be able to (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. 1. Prepare simple foods requiring no mixing or cooking? ..... 1...2...3...4...5

b. 2. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? ..... 1...2...3...4...5

c. 3. Add coins of various denominations up to one dollar? ..... 1...2...3...4...5

d. 4. Use the telephone to call home, doctor, fire, police? ..... 1...2...3...4...5

e. 5. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.? ..... 1...2...3...4...5

f. 6. Refrain from exhibiting unacceptable sexual behavior in public? ..... 1...2...3...4...5

g. 7. Go around cottage, ward, building, without running away, wandering off, or becoming lost? ..... 1...2...3...4...5

h. 8. Make minor purchases i.e., candy, soft drink, etc.? ..... 1...2...3...4...5

VR 460-04-3.1300. Outpatient Physical Rehabilitative Services Regulations.

§ 1. Scope

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services.

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care.

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be required to meet state and federal licensing or certification requirements.

§ 2. 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, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or by a school district employing qualified physical therapists.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed 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 sophisti- cation, 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.

§ 3. 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, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or a school district employing qualified therapists.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association under the supervision of an occupational therapist as defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 4. Services for individuals with speech, hearing, and language disorders.

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, 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 therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *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 a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 5. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, *school divisions,* 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~~ *annually* . The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 6. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a rehabilitation agency, or a school district shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

5. Include a copy of the physician's orders and plan of care;

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school districts) 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 districts, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 7. Service limitations.

The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology services:

1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

2. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

3. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

6. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-04-8.10. Regulations for Long-Stay Acute Care Hospitals.

§ 1. Scope.

Medicaid shall cover long-stay acute care hospital services as defined in § 2 provided by hospitals certified as long-stay acute care hospitals and which have provider agreements with the Department of Medical Assistance Services.

§ 2. Authorization for services.

Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Prior authorization shall be required by submission of the information described above. Physician certification must accompany the request. Periods of care not authorized by the Department of Medical Assistance Services shall not be approved for payment.

§ 3. Criteria for long-stay acute care hospital stays.

A. Adult long-stay acute care hospital criteria.

1. The resident must have long-term health conditions requiring close medical supervision, 24-hour licensed nursing care, and specialized services or equipment needs. The population to be served includes individuals requiring mechanical ventilation, individuals with communicable diseases requiring universal or respiratory precautions, individuals requiring ongoing intravenous medication or nutrition administration, and individuals requiring comprehensive rehabilitative therapy services.

2. At a minimum, the individual must require

physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit on which the resident resides, 24 hours a day), and coordinated multidisciplinary team approach to meet needs.

3. In addition, the individual must meet at least one of the following requirements:

a. Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

c. The individual must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(3) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(6) Multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour, stabilization of feeding, stabilization of elimination, etc.)

B. Pediatric/adolescent patients in long-stay acute care hospitals criteria.

1. To be eligible for long-stay acute care hospital services, the child must have ongoing health conditions requiring close medical supervision, 24-hour licensed nursing supervision, and specialized services or equipment needs. The recipient must be age 21 or under. The population to be served includes children requiring mechanical ventilation, those with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.), those requiring ongoing intravenous medication or nutrition administration, those requiring daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), those requiring comprehensive rehabilitative therapy services, and those with a terminal illness.

2. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit on which the child is residing 24 hours a day), and a coordinated multidisciplinary team approach to meet needs.

3. In addition, the child must meet one of the following requirements:

a. Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc; or

c. Must require at least one of the following special services:

(1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(3) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day

(i.e., grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(6) Ostomy care requiring services by a licensed nurse;

(7) Services required for terminal care.

4. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the specific needs of the child and must be provided in an organized manner that encourages the child to participate. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily. The services must be provided for a minimum of two hours per day.

§ 4. Documentation requirements.

A. Services not specifically documented in the resident's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

B. The long-stay acute care hospital shall maintain and retain the business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided. Such records shall be retained for a period of not less than five years from the date of service or as provided by applicable state laws, whichever period is longer, except that, if an audit is initiated within the required retention period, the records must be retained until the audit is completed and every exception resolved.

C. The following documentation must be maintained in the resident's medical record:

1. Each record must identify the resident on each page.

2. Entries must be signed and dated (month, day, and year) by the author, followed by professional title. Care rendered by personnel under the supervision of the provider, which is in accordance with Medicaid policy, must be countersigned by the responsible licensed participating provider.

3. The attending physician must certify at the time of admission that the resident requires long-stay acute hospital care and meets the criteria as defined by DMAS.

4. The record must contain a preliminary working diagnosis and the elements of a history and physical examination upon which the diagnosis is based.

5. All services provided, as well as any treatment plan, must be entered in the record. Any drugs prescribed and administered as part of a physician's treatment plan, including the quantities, route of administration, and the dosage must be recorded.

6. The record must indicate the resident's progress, any change in diagnosis or treatment, and the response to the treatment. The documentation must include in detail all treatment rendered to the resident in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment.

7. Physician progress notes must be written at least weekly and must reflect that the resident has been examined by the physician.

8. A comprehensive nursing assessment must be made by a registered nurse at the time of admission to the facility. Nursing care plans based on an admission assessment must be resident-specific and must indicate realistic nursing needs, measurable goals, and specifically state the method by which the goals are to be accomplished. They must be updated as needed, but at least monthly. Nursing summaries, in addition to the p.r.n. (as needed) notes, are required weekly. Nursing summaries must give a current, written picture of the resident, the resident's nursing needs, the care being provided, and the resident's response to treatment. The nursing summary at a minimum must address the following: medical status; functional status in activities of daily living, elimination, mobility, and emotional/mental status; special nursing procedures; and identification and resolution of acute illnesses or episodes.

9. Social services documentation must include a social evaluation and history and a social services plan of care including a discharge plan. The social work plans of care must be resident-specific and include measurable goals with realistic time frames. Social work plans of care must be updated as needed and at least monthly every 30 days. Social services progress notes must be written at least every 30 days.

10. Activities documentation must be based on a comprehensive assessment completed by the designated activity coordinator. An activity plan of care must be developed for each resident and must include consideration of the individual's interests and skills, the physician's recommendations, social and rehabilitation goals, and personal care requirements. Individual and group activities must be included in the plan. The activity plan of care must be updated as needed but at least every 30 days. Activity progress notes must be written at least every 30 days. Therapeutic leisure activities must be provided daily.

11. Rehabilitative therapy (physical and occupational therapy or speech-language services) or other health care professional (psychologist, respiratory therapist, etc.) documentation must include an assessment completed by the qualified rehabilitation professional. A plan of care developed specific to the resident must be developed and must include measurable goals with realistic time frames. The plan of care must be updated as needed but at least every 30 days. Rehabilitative therapy or other health care professional progress notes must be written at least every 30 days.

12. Each resident's record must contain a dietary evaluation and plan of care completed by a registered dietician. The plan of care must be resident-specific and must have measurable goals within realistic time frames. The plan of care must be updated as needed, but at least every 30 days. The dietary assessment and monthly plans of care must be completed by a registered dietician. Dietary progress notes must be written at least every 30 days.

13. A coordinated interdisciplinary plan of care must be developed for each resident. The plan of care must be resident-specific and must contain measurable goals within realistic time frames. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activities coordinators, dieticians, rehabilitative therapists, direct care staff, and the resident or responsible party. At a minimum, the interdisciplinary team must review and update the interdisciplinary plan of care as needed but at least every 30 days. The interdisciplinary plan of care review must identify those attending the meeting, changes in goals and approaches, and progress made toward meeting established goals and discharge.

14. For residents age 21 and younger, the record must contain documentation that educational or habilitative services are provided as required. The documentation shall include an evaluation of the resident's educational or habilitative needs, a description of the educational or habilitative services provided, a schedule of planned programs, and records of resident attendance. Educational or habilitative progress notes shall be written at least every 30 days.

§ 5. Long-stay acute care hospital services.

All services must be provided by appropriately qualified personnel. The following services are covered long-stay acute care hospital services:

A. Physician services : ~~1. Physician services~~ shall be performed by a professional who is licensed to practice in the Commonwealth, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor.

An attending physician means a physician who is a doctor of medicine or osteopathy and is identified by the individual as having the most significant role in the determination and delivery of the individual's medical care.

B. Licensed nursing services : ~~1.~~ must be provided 24 hours a day (a registered nurse, whose sole responsibility is the designated unit on which the resident resides, must be on the unit 24 hours a day).

~~2.~~ Nursing services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a registered nurse or licensed professional nurse, or nursing assistant under the direct supervision of a registered nurse who is experienced in providing the specialized care required by the resident.

~~C. Rehabilitative services.~~

~~1.~~ *C.* Rehabilitative services shall be directly and specifically related to written plan of care designed by a physician after any needed consultation with the rehabilitation professional.

~~2.~~ Physical therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine.

~~3.~~ Occupational therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined.

~~4.~~ Speech-language services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology.

D. Ancillary services shall be provided directly and specifically related to a plan of care designed by the physician. The ancillary services may include but are not limited to dietary, respiratory therapy services, and psychological services.

1. Dietary services must be of a level of complexity

or sophistication, or the nature of the resident shall be of a nature that the services can only be performed or supervised by a dietician, registered with the American Dietetic Association.

2. Respiratory therapy services must be of a level of complexity and sophistication, or the nature of the resident shall be of a nature that the services can only be performed by a respiratory therapist. Respiratory therapy services must be provided by a respiratory therapist certified by the Board of Medicine or registered with the National Board for Respiratory Care. If the facility agrees to provide care to a resident who is dependent on mechanical assistance for respiration (positive or negative pressure mechanical ventilators), respiratory therapy services must be available 24 hours daily. If the facility contracts for respiratory therapy services, a respiratory therapist must be on call 24 hours daily and available to the facility in a timely manner.

3. Psychology services shall be of a level of complexity or sophistication, or the condition shall be of a nature that the services can only be performed by a psychologist licensed by the Board of Medicine *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* .

4. Activity programs under the supervision of designated activities coordinators. The program of activities must include both individual and group activities which are based on consideration of interest, skills, physical and mental status, and personal care requirements.

5. Provide social services to each resident in an effort to assist the resident, his family and the facility staff in understanding the significant social and emotional factors related to the health problems, to assist with appropriate utilization of community resources and to coordinate discharge plans. Social services must be provided by a social worker with at least a bachelor's degree in social work or similar qualifications.

§ 6. Long-stay acute care hospital requirements.

A. A coordinated multidisciplinary team approach shall be implemented to meet the needs of the resident. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activity coordinators, dieticians, rehabilitative therapists, and any direct care staff.

B. The long-stay acute care hospital shall provide for the educational and habilitative needs of residents age 21 or younger. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must be individualized to meet the specific needs of the child and must be provided in an organized manner which encourages the child to participate. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. Therapeutic leisure activities must be provided daily.

C. The long-stay acute care hospital shall provide an acceptable plan for assuring that residents requiring long-stay acute hospital care are afforded the same opportunity for participating in integrated facility activities as the other facility residents.

D. Nonemergency transportation shall be provided so that residents may participate in community activities sponsored by the facility or community activities in which the facility is providing transportation for other facility residents.

E. The long-stay acute care hospital shall coordinate discharge planning for the resident utilizing all available resources in an effort to assist the resident to maximize his potential for independence and self-sufficiency and to assure that services are being provided by the most effective level of care.

F. The long-stay acute care hospital shall provide family or caregiver training in the skills necessary for the care of the resident in the community, should the resident or the resident's caregiver so desire.

G. The long-stay acute care hospital shall provide all necessary durable medical equipment to sustain life or monitor vital signs and to carry out a plan of care designed by the physician. This equipment may include but is not limited to mechanical ventilator, apnea monitor, etc.

H. The long-stay acute care hospital shall provide utilization review activities as follows:

1. Purpose. The objective of the utilization review mechanism is the maintenance of high-quality patient care and the most efficient utilization of resources through an educational approach involving the study of patient care as well as to ensure that inpatient care is provided only when medically necessary and that the care meets quality standards.

a. In addition to the certification by the resident's physician, the hospital shall have a utilization review plan which provides for review of all Medicaid patient stays and medical care evaluation studies of admissions, durations of stay, and professional services rendered.

b. Effective utilization review shall be maintained on a continuing basis to ensure the medical necessity of the services for which the program pays and to promote the most efficient use of available health facilities and services.

2. The Department of Medical Assistance Services delegates to the local facilities' utilization review departments the utilization review of inpatient hospital services for all Medicaid admissions. The hospital must have a utilization review plan reflecting 100% review of Medicaid residents, approved by the Division of Licensure and Certification of the Department of Health, and DMAS or the appropriate licensing agency in the state in which the institution is licensed.

3. The hospital utilization review coordinator shall approve the medical necessity, based on admission criteria approved by the utilization review committee, within one working day of admission. In the event of an intervening Saturday, Sunday, or holiday, a review must be performed the next working day. This review shall be reflected in the hospital utilization review plan and the resident's record.

4. If the admission is determined medically necessary, an initial stay review date must be assigned and reflected on the utilization review sheets. Continued or extended stay review must be assigned prior to or on the date assigned for the initial stay. If the facility's utilization review committee has reason to believe that an inpatient admission was not medically necessary, it may review the admission at any time. However, the decision of a utilization review committee in one facility shall not be binding upon the utilization review committee in another facility.

5. If the admission or continued stay is found to be medically unnecessary, the attending physician shall be notified and be allowed to present additional information. If the hospital physician advisor still finds the admission or continued stay unnecessary, a notice of adverse decision must be made within one working day after the admission or continued stay is denied. Copies of this decision must be sent by the utilization review committee's designated agent to the hospital administrator, attending physician, recipient or recipient's authorized representative, and Medicaid.

6. As part of the utilization review plan, long-stay acute care hospitals shall have one medical or patient care evaluation study in process and one completed each calendar year. Medical care evaluation studies must contain the elements mandated by 42 CFR 456.141 through 456.145. The elements are objectives of study, results of the study, evaluation of the results, and action plan or recommendations as indicated by study results.

7. The Department of Medical Assistance Services shall monitor the length of stay for inpatient hospital stays. The guidelines used shall be based on the criteria described in § 3 of these regulations. If the stay or any portion of the stay is found to be medically unnecessary, contrary to program requirements, or if the required documentation has not been received, reimbursement will not be made by Medicaid.

8. 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.

I. The long-stay acute care hospital shall provide all medical supplies necessary to provide care as directed by the physician's plan of care for the resident. These supplies may include but are not limited to suction catheters, tracheostomy care supplies, oxygen, etc.

J. The long-stay acute care hospital shall provide all nutritional elements including those that must be administered intravenously. This includes providing all necessary equipment or supplies necessary to administer the nutrients.

K. The long-stay acute care hospital shall submit all necessary health care and medical social service information on the resident to DMAS for preadmission authorization. The provider cannot bill DMAS for services that have not been preauthorized.

VA.R. Doc. No. R93-654; Filed June 29, 1993, 4:09 p.m.

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Title of Regulation: **State Plan for Medical Assistance Relating to Durable Medical Equipment and Supplies.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care.

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

Effective Dates: September 1, 1993, through August 30, 1994.

Summary:

1. Request: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Durable Medical Equipment and Supplies. This regulation will provide the agency with the regulatory authority to clarify the requirements and the process for the provision of medical equipment and supplies.

2. Recommendation: Recommend approval of the Department's request to take an emergency adoption action regarding durable medical equipment and supplies. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: June 7, 1993

3. Concurrences:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 11, 1993

4. Governor's Action:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. Filed With:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 24, 1993

6. Backround: The sections of the State Plan for Medical Assistance modified by this action are the "Amount, Duration, and Scope of Services," Attachment 3.1 A & B, Supplement 1, and the "Standards Established and Methods Used to Assure High Quality of Care," Attachment 3.1-C.

The purpose of this action is to amend the State Plan for Medical Assistance by removing the currently required prerequisite skilled nursing visit for persons receiving durable medical equipement and supplies through the home health services program. This change has been required by the Health Care Financing Administration (HCFA) to bring the Commonwealth's State Plan into compliance with federal regulations.

Durable medical equipment, supplies, and appliances are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

DMAS currently requires that a recipient who receives durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies are 1) to assess the recipient's needs in the actual environment in which he will be using the items, 2) to determine the quantity of supplies needed to meet his current condition, 3) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and 4) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions by the recipient's current health status.

In addition, a single skilled nursing follow-up visit is required after the recipient receives the prescribed equipment or supplies to determine that it meets the recipient's needs, that it is suitable for use in the home, and the recipient or caregiver is knowledgeable and comfortable in using the equipment.

Care provided by a home health agency follows a written plan of care established and reviewed by a physician as often as the patient's condition requires, but at least every 60 days. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The plan of care, developed in consultation with the agency staff, covers all pertinent diagnoses, including mental status; types of services and equipment required; frequency of visits; prognosis; rehabilitation potential; functional limitations; activities permitted; nurtritional requirements; medications and treatments; any safety measures to protect against injury; instructions for a timely discharge or referral; and any other appropriate items.

Recently, HCFA has informed the Department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition to predicate the receipt of one home health care service on the receipt of another such service may be imposed, DMAS seeks to remove the requirement that the recipient who receives medical equipment and supplies also receives skilled nursing visits.

Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. Because physicians will no longer be required to order equipment and supplies through the home health plan of treatmen DMAS is seeking to replace the currently used plan o treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies.

The physician will be required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

The medical equipment and supply vendor must provide the supplies as prescribed by the physician. Utilization review will be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate.

Since federal regulations at 42 Code of Federal Regulations, Part 440.70, allow the provision of equipment and supplies only under the home health benefit, language addressing medical equipment and supplies in the rehabilitation section of Attachment 3.1-C of the Plan is removed. Recipients who are discharged from intensive rehabilitative services and who require equipment or supplies would meet home health criteria and would be eligible to receive such items under that program.

In addition to these changes, the population for which nutritional supplements will be covered is expanded unde home health services. Instead of requiring that the enter or total parenteral nutrition be the sole source of nutritio

and administered only by nasogastric or gastrostomy tube, coverage will also include individuals who receive the nutrition orally. All other criteria must still be met (e.g., the supplement must be medically necessary). Coverage of oral administration does not include the provision of routine infant formulae.

Technical changes have also been included in this package to incorporate by reference the Virginia Medicaid provider manuals that relate to long-term care services (nursing facility, hospice, home health, rehabilitation, and durable medical equipment and supplies). This was done as recommended by the Office of the Attorney General.

7. Authority to Act: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1 (C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

The Code of Federal Regulations, Title 43, Part 440, provides for DMAS' authority to administer the home health services and durable medical equipment and supplies programs.

In preparation for this policy's implementation, DMAS has scheduled provider training for the months of July and August. In anticipation of such training, DMAS is preparing a 30 page memorandum for approximately 3200 providers (durable medical equipment and supplies vendors, pharmacies, home health agencies, and rehab agencies) to explain the new policy and introduce the newly developed Certificate of Medical Necessity. Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the September 1, 1993, effective date established by DMAS to comply with HCFA's mandate.

8. Fiscal/Budgetary Impact: In Fy 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were $10,613,115 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that afdditional FY 94 expenditures will be approximately $200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

9. Recommendation: Recommend approval of this request to adopt this emergency regulation to become effective September 1, 1993. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA, whichever occurs first. Without an effective emergency regulation, the Department would lack the authority to implement the durable medical equipment and supplies program in such a way as to meet HCFA's requirements.

10. Approval Sought for VR 460-03-3.1100 and 460-02-3.1300. Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

VR 460-03-3.1100. Amount, Duration and Scope of Services.

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. *Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.*

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional services unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home Health Aides must function under the supervision of a registered nurse.

2. Home Health Aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary medical supplies, equipment and appliances are covered for ~~patients of the Home Health Agency.~~ *Medicaid recipients who meet home health criteria.* Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. *All medical supplies, equipment, and appliances shall be provided in accordance with guidelines found in the Virginia Medicaid DME and Supplies Manual.*

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, and 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 non-legend 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 Attachment 3.1 A & B.

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

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

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

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

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

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

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

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

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

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

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

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 without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program;

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

8. Private duty nursing services.

A. Not provided.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care.

(c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) Ostomy care requiring services by a licensed nurse;

(g) Services required for terminal care.

e. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

C. Nursing facilities.

1. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. *All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.*

* * *

(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning;

(15) Family or caregiver training; and

(16) Infection control.

D. *Intermediate Care* Facilities for the Mentally Retarded ~~(FMR)~~ *(ICF/MR)* and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ~~FMR~~ *ICF/MR* or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care ~~FMR~~ *ICF/MR* or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

6. All services provided in an IMD and in an ICF/MI shall be provided in accordance with guidelines found

in the Virginia Medicaid Nursing Home Manual.

E. Home health services.

1. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days.

3. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

a. The patient is unable to leave home without the assistance of others *who are required to provide medically necessary health care interventions* or the use of special *medical* equipment;

b. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;

c. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;

d. The patient has an active communicable disease and the physician quarantines the patient.

4. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

a. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;

b. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;

c. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;

d. When the duration of the treatment is such that rendering it outside the home is not practical.

5. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

a. Nursing services,

b. Home health aide services,

c. Physical therapy services,

d. Occupational therapy services,

e. Speech-language pathology services, or

f. Medical supplies, equipment, and appliances suitable for use in the home.

6. General conditions. The following general conditions apply to ~~reimbursable home health services.~~ *skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.*

a. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his or her license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms.

c. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. The physician orders for durable medical equipment and supplies shall include the specific item identification including all modifications, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or supplies requested must be directly related to the physician's plan of care and to the patient's condition.

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

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

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

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

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

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

(1) Diagnosis and prognosis,

(2) Functional limitations,

(3) Orders for nursing or other therapeutic services,

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

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

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

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

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

~~6.~~ *7.* Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

~~7.~~ *8.* All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

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

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

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

(1) Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist wh

makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

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

(3) Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology.

d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care *for persons receiving home health services in addition to durable medical equipment and supplies* . Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

e. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

F. Optometrists' services are limited to examinations (refractions) after preauthorization by the state agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

G. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

H. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

I. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

* * *

PART I.
INTENSIVE PHYSICAL REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants shall meet the following criteria:

A. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. Occupational Therapy

2. Physical Therapy

3. Cognitive Rehabilitation

4. Speech-Language Therapy

B. Medical condition stable and compatible with an active rehabilitation program.

PART II.
INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is

approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be reques ted in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

PART III.
DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services shall, at a minimum:

A. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. Describe any prior treatment and attempts to rehabilitate the patient;

C. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. Document that a multi-disciplinary coordinated treatment plan specifically designed for the patient has been developed;

E. Document in detail all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. Document each change in each of the patient's conditions;

G. Describe responses to and the outcome of treatment; and

H. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. *All intensive rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.*

PART IV.
INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a re-evaluation.

§ 4.3. Admissions for evaluation and/or training for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

PART V.
CONTINUING EVALUATION.

§ 5.1. Team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall periodically assess the validity of the rehabilitation goals established at the time of the initial evaluation, and make appropriate adjustments in the rehabilitation goals and the prescribed treatment program. A review by the various team members of each others' notes does not constitute a team conference. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be terminated, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursment shall be provided.

PART VI.
THERAPEUTIC FURLOUGH DAYS.

§ 6.1. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.

PART VII.
DISCHARGE PLANNING.

§ 7.1. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the

anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

PART VIII.
REHABILITATION SERVICES TO PATIENTS.

§ 8.1. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:

A. Rehabilitative nursing.

Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability.

Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative nursing services which can only be provided in an intensive rehabilitation setting.

B. Physical therapy.

Physical therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

C. Occupational therapy.

Occupational therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-language therapy.

Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. Cognitive rehabilitation.

Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

3. Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated by a physician or clinical psychologist licensed by the Board of Medicine;

4. The cognitive rehabilitation services shall be an integrated part of the total patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. Psychology.

Psychology services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* ;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. Social work.

Social work services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. Recreational therapy.

Recreational therapy are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. Prosthetic/orthotic services.

1. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. The services shall be directly and specifically related to an active written treatment plan approved by a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

~~J. Durable medical equipment.~~

~~1. Durable medical equipment furnished the patient receiving approved covered rehabilitation services is covered when the equipment is necessary to carry out an approved plan of rehabilitation. A rehabilitation hospital or a rehabilitation unit of a hospital enrolled with Medicaid under a separate provider agreement for rehabilitative services may supply the durable medical equipment. The provision of the equipment is to be billed as an outpatient service. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the~~

~~hospital for inpatient care is not covered by this provision.~~

~~2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services include, but are not limited to, the following:~~

~~a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;~~

~~b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office;~~

~~c. Furniture or appliance not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);~~

~~d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience, for example, an electric wheelchair plus a manual chair; cleansing wipes);~~

~~e. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and non-legend drugs);~~

~~f. Home or vehicle modifications;~~

~~g. Items not suitable for or used primarily in the home setting (i.e., but not limited to, car seats, equipment to be used while at school);~~

~~h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).~~

PART IX.
HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. *All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.*

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

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

* * *

PART XI.
GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

§ 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

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

§ 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and

speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

§ 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440 110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(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.

§ 11.5. Authorization for services.

A. ~~General physical rehabilitative~~ *Physical therapy, occupational therapy, and speech-language pathology* services provided in outpatient settings of acute and rehabilitation hospitals ~~and by~~ , rehabilitation agencies , *home health agencies, or school divisions* shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125)~~ . ~~This request must be signed and dated by a physician.~~ *Documentation for medical justification must include physician orders or a Plan of Care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting , *home health agency, school division,* or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided.

VA.R. Doc. No. R93-600; Filed June 24, 1993, 4 p.m.

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Title of Regulation: **State Plan for Medical Assistance Relating to MR Waiver Services.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-03-3.1102. Case Management Services.
VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation.
VR 460-04-8.1500. Community Mental Health and Mental Retardation Services, Amount, Duration, and Scope of Services.

Summary:

1. Request: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled MR Waiver Services. This regulation will remove certain administrative impediments to the effective and efficient implementation of these services.

2. Recommendation: Recommend approval of the Department's request to take an emergency adoption action regarding MR Waiver Services. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski, Director
Date: June 9, 1993

3. Concurrences:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 18, 1993

4. Governor's Action:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. Filed With:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

6. Backround: The State Plan sections which are affected by this action are the Amount, Duration, and Scope of Services (VR 460-03-3.1100) and Case Management Services (VR 460-03-3.1102). The State regulations affected by this action are Home and Community Based Care Services for Individuals with Mental Retardation (VR 460-04-8.12) and Community Mental Health Services: Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The 1990 Appropriations Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for the community mental health and mental retardation services in Virginia. Final regulations were promulgated in 1992 which provided coverage for numerous Medicaid services for persons with mental retardation and mental illness through State Plan services and waiver services. The Secretary of Helath and Human Resources has directed agencies to simplify procedures and reduce paperwork to more efficiently administer services to recipients. Staff at DMHMRSAS and DMAS has been working with the MR Executive Workgroup comprised of providers, local Community Services Boards, and consumer representatives to identify areas which, upon implementation, have been identified as problematic to the administration of services to persons with mental retardation and mental illness.

The purpose of this emergency regulation is to immediately remove certain administrative impediments to the effective and efficient implementation of these services to allow persons with related conditions to be served by providers contracted with the Department of Rehabilitative Services (DRS). Currently, there are approximately 105 persons residing in nursing facilities who have been determined, through the Annual Resident Review (ARR) process mandated by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), to require specialized services. These persons may elect to remain in the nursing facility and receive habilitative services or they may elect to leave the nursing facility and receive services through the home and community-based waiver for persons with mental retardation. Current regulations governing community mental retardation services restrict providers of these services to providers licensed by DMHMRSAS. These emergency regulations would broaden the provider qualifications for persons with related conditions, as defined by HCFA in OBRA '87, to include those providers contracted with DRS as habilitative service providers. The regulations governing the MR waiver services already include DRS habilitative providers as qualified to provide MR waiver services. These emergency regulations do not affect the amount or scope of services an individual may receive, do not affect the State's approved waiver for community services to persons with mental retardation and do not impact on the quality of services being provided to this population. The key provisions of this regulatory action are as described.

The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact every 90 days, regardless of the client's service target group, and clarify the frequency as once every 90 days rather than once within a 90 day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of Day Health and Rehabilitation services have been removed since there is no differentiation in rate or allowed amount of the service based on the difference in level. Additionally, changes are made to revise the existing definition of development disability and to rename the definition "related conditions," to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87.

Another change clarifies coverage of Day Health and Rehabilitiation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to

be qualified for Medicaid reimbursement for Day Health and Rehabilitation services. The changes in the regulations governing MR waiver services have been made to improve the operation of the waiver and incorporate recommendations from the MR Executive Workgroup. References to two waivers and use of the Inventory for Client and Agency Planning (ICAP) have been rmoved because the state is consolidating the two waivers into one waiver for renewal in 1993. The state is also revising the assessment and will discontinue using the ICAP as the required assessment for MR Waiver Services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to respond to concerns expressed in this area.

7. Authority to Act: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1 (C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. An emergency regulation is required to respond expediently to the Secretary's direction to the DMAS and DMHMRSAS to remove administrative impediments to the efficient and effective conduct of the reimbursement for services.

8. Fiscal/Budgetary Impact: Because there is no impact on the amount or scope of these services nor any change in the population receiving these services contained in these regulations, there is no budget impact from these emergency regulations.

9. Recommendation: Recommend approval of this request to adopt this emergency regulation to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA.

10. Approval Sought for VR 460-03-3.1100. Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C)(5) to adopt the following regulation:

VR 460-03-3.1100. Amount, Duration and Scope of Services.

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~~ *780 units* , include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to ~~312 days~~ *936 units* , include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services */related conditions* . Day health and rehabilitation services shall be covered *for persons with MR or related conditions,* and the following definitions shall apply:

a. Day health and rehabilitation services (limited to ~~500~~ *780* 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 *or be contracted with DRS as an habilitation service provider if offered to persons with related conditions* . Specific components of day health and rehabilitation services include the following as needed:

~~(1)~~ *a.* Self-care and hygiene skills;

~~(2)~~ *b.* Eating and toilet training skills;

~~(3)~~ *c.* Task learning skills;

~~(4)~~ *d.* Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

~~(5)~~ *e.* 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)~~ *f.* Medication management;

~~(7)~~ *g.* Travel and related training to and from the training sites and service and support activities;

~~(8)~~ *h.* 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.

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4. Follow-up and monitoring. Assessing ongoing progress and ensuring services are delivered.

5. Education and counseling. Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Any duly enrolled provider which the department determines is qualified who has signed an agreement with Department of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness can be obtained.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group.

The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, significant others, service providers, and others including ~~a minimum of~~ *at least* one face-to-face contact ~~within a 90-day period~~ *every 90 days* . Billing can be submitted *for an active client* only for months in which direct or client-related contacts, activity or communications occur.

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(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group.

Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others

including ~~a minimum of~~ *at least* one face-to-face contact ~~within a 90-day period~~ *every 90 days* . Billing can be submitted only *for an active client* for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

☒ Entire state.

☐ Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

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(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

§ 4. Individuals with mental retardation.

A. Target group.

Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including ~~a minimum of~~ *at least* one face-to-face contact ~~within a 90-day period~~ *every 90 days* . Billing can be submitted *for an active client* only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals *may* be billed for no more than two predischarge periods in twelve months.

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§ 5. Individuals with mental retardation and related conditions who are participants in the home and community-based care waivers for persons with mental retardation and related conditions.

A. Target group.

Medicaid eligible individuals with mental retardation and related conditions, or a child under six years of age who is at developmental risk, who have been determined to be eligible for home and community based care waiver services for persons with mental retardation and related conditions.

1. An active client for waiver case management shall mean an individual who receives ~~a minimum of~~ *at least* one face-to-face contact every ~~two months~~ *90 days* and monthly on-going case management interactions. There shall be no maximum service limits for case management services ~~must be preauthorized by DMAS after review and recommendation by the care coordinator employed by DMHMRSAS and verification of waiver eligibility.~~ *may be initieated up to 3 months prior to the start of waiver services, unless the individual is institutionalized.*

2. There shall be no maximum service limits for case management services except case management services for indiviudals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in twelve months.

VR 460-04-8.12. Home and Community Based Services for Individuals with Mental Retardation.

§ 1. Definitions.

"Care coordinators" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"Case management" means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

"Case managers" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Community based care waiver services" or *"waiver services"* means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in a nursing facility for the mentally retarded.

"Community services board" or *"CSB"* means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

"Consumer Service Plan" or *"CSP"* means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

"DMAS" means the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, and transportation to and from training sites, services and support activities.

~~*"Developmental disability"* means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that individual attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and (v) results in the individual's need for special care, treatment or services that are individually planned and coordinated, and that are of lifelong or extended duration.~~

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

"Habilitation" means prevocational and supported employment for mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded, aimed at preparing an individual for paid or unpaid employment.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or *"ISP"* means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations VR 470-02-09.

~~*"Inventory for client and agency planning"* or *"ICAP"* means the assesment instrument used by case managers and care coordinators to record the mentally retarded individual's needs and document that the individual meets the ICF/MR level of care.~~

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is

associated with impairment in adaptive behavior.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

"Related conditions" ~~means those conditions defined in 42 CFR 435.1009 as severe, chronic disabilities attributable to cerebral palsy or epilepsy or other conditions found to be closely related to mental retardation due to the impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, which requires treatment or services similar to those required for these persons. A related condition must manifest itself before the person reaches age 22, be likely to continue indefinitely and result in substantial functional limitations in three or more areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent living.~~ *as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned or coordinated and that are of lifelong or extended duration.*

"Residential support services" means support provided in the mentally retarded individual's home or in a licensed residence which includes training, assistance, and supervision in enabling the individual to maintain or improve his health, assistance in performing individual care tasks, training in activities of daily living, training and use of community resources, and adapting behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room and board.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

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

§ 2. General coverage and requirements for home and community-based care services.

A. Waiver service populations.

Home and community-based services shall be available through ~~two~~ *a Section 1915(c)* waiver ~~services programs. The services, eligibility determination, authorization process and provider requirements set forth in these regulations apply equally to both waiver programs. DMAS shall assign individuals to a waiver program based on the individual's diagnosis or condition~~ .

1. Coverage shall be provided under ~~a~~ *the* waiver ~~program specifically~~ for the following individuals ~~currently residing in nursing facilities~~ who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

a. Individuals with mental retardation.

b. Individuals with related conditions *currently residing in nursing facilities and determined to require specialized services* .

~~2. Coverage shall be provided under a separate waiver program for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:~~

~~a. Individuals with mental retardation.~~

~~b.~~ c. Individuals under the age of six at developmental risk who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. At age six, these individuals must be determined to be mentally retarded to continue to receive home and community-based care services.

B. Covered services.

1. Covered services shall include: residential support, habilitation, day support and therapeutic consultation.

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria

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

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

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

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

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first $75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of $575 per month (149% of the SSI payment level for a family of one with no income).

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

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

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

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first $75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of $575 per month (149% of the SSI payment level for a family of one with no income).

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

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

D. Assessment and authorization of home and community-based care services.

1. The individual's need for home and community-based care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the ~~Inventory for Client and Agency Planning (ICAP)~~ *assessment* , determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessmen process shall be determining the level of care

required by applying the existing DMAS ICF/MR criteria (VR 460-04-8.2).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be *current,* completed *prior to the individual's entry to the waiver,* no earlier than ~~60 days~~ *12 months* prior to beginning waiver services. Social assessments must have been completed within one year of beginning waiver services. Psychological evaluations or reviews must be completed within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that precedes admission to waiver services by more than three years.

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid, or exit from nursing facility placement.

5. Community-based care waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, has a related condition *, and is currently residing in a nursing facility and been determined to require specialized services,* or is a child under the age of six at developmental risk who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the care coordinator for final determination of ICF/MR level of care and authorization for community-based care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

§ 3. General conditions and requirements for all home and community-based care participating providers.

A. General requirements.

Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to refuse medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of the recipient's eligibility.

9. Accept as payment in full the amount established by DMAS.

10. Use program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.

15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.

B. Requests for participation.

DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.

C. Provider participation standards.

For DMAS to approve contracts with home and community-based care providers the following standards shall be met:

1. The provider must have the ability to serve all individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.

2. The provider must have the administrative and financial management capacity to meet state and federal requirements.

3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.

4. The provider of residential and day support services must meet the licensing requirements of DMHMRSAS that address standards for personnel, residential and day program environments, and program and service content. Residential support services may also be provided in programs licensed by DSS (homes for adults) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered by employees of the CSB according to DMHMRSAS policies.

5. Habilitation services shall be provided by agencies that are either licensed by DMHMRSAS or are vendors of prevocational, vocational or supported employment services for DRS.

6. Services provided by members of professional disciplines shall meet all applicable state licensure requirements. Persons providing consultation in behavioral analysis shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities.

7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR Part 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, VR 470-02-08, VR 470-02-10 and VR 470-02-11 or through DSS licensure standards VR 615-22-05 and VR 615-50-1.

D. Adherence to provider contract and DMAS provider service manual.

In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS provider service manual.

E. Recipient choice of provider agencies.

~~If there is more than one approved provider agency in the community,~~ The waiver recipient shall *be informed of all available providers in the community and shall* have the option of selecting the provider agency of his choice *from among those agencies which can appropriately meet the indiviudal's need* .

F. Termination of provider participation.

DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions.

Adverse actions may include, but are not limited to, disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:

a. A written response and reconsideration of the preliminary findings.

b. The informal conference.

c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information.

It shall be the responsibility of the case management provider to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.

2. A recipient dies.

3. A recipient is discharged or terminated from services.

4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care.

It is the care coordinator's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.

2. The case manager will review the need for a change and may recommend a change to the plan of care to the care coordinator.

3. The care coordinator will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 72 hours of receipt of the request for change.

4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals Regulations (VR 460-04-8.7).

5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient or family and case manager 10 days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and care coordinator must be notified prior to termination. The 10-day written notification period shall not be required.

7. Termination of home and community-based care services for a recipient by the care coordinator. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The care coordinator has the authority to terminate home and community-based care services.

J. Suspected abuse or neglect.

Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS monitoring.

DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

§ 4. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home or in a licensed residence in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence. Service providers are reimbursed only for the amount and type of residential support services included in the individual's approved plan of care based on an hourly fee for service. Residential support services shall not be authorized in the plan of care unless the individual requires these services and they exceed the care included in the individual's room and board arrangement.

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service to be delivered.

C. Habilitation services shall include prevocational and supported employment services for former institutional residents. Each plan of care must contain documentation regarding whether prevocational or supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service delivered.

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy and speech therapy. Behavioral analysis performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services may be provided in residential or day support settings or in office settings. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service.

§ 5. Reevaluation of service need and utilization review.

A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the recipient, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

The case manager is responsible for continuous monitoring of the appropriateness of the recipient's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The care coordinator shall review the plan of care every six months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by the care coordinator, another employee of DMHMRSAS or DMAS.

B. Review of level of care.

1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to assure proper utilization of services.

2. The case manager shall coordinate a comprehensive reassessment, including , *if indicated,* a medical examination and a psychological evaluation ~~or review~~ for every waiver recipient at least once a year. Th reassessment shall include an update of the ~~ICAP~~

assessment instrument ~~; or other appropriate instrument for children under six years of age,~~ and any other appropriate assessment data based on the recipient's characteristics.

3. A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or care coordinator. Medical examiniations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.

4. A new psychological evaluation is required every 3 years.

C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ~~ICAP and other~~ assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.

b. All ISP's from any provider rendering waiver services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.

b. An attendance log which documents the date services were rendered and the amount and type of service rendered.

c. Appropriate progress notes reflecting recipient's *status and, as appropriate,* progress toward the goals on the ISP.

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration, and Scope of Services.

§ 1. Definitions.

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

"Board" or *"BMAS"* means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the client of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the client's age, primary disability, level of functioning and other relevant factors.

"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 the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

~~*"Developmental disability"* means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.~~

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or *"ISP"* means that which is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care

coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions" as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebal palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

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

§ 2. Mental health services.

The following services shall be covered: intensive in-home services, therapeutic day treatment for children and adolescents, day treatment/partial hospitalization, psychosocial rehabilitation, and crisis intervention. These covered services are further defined below:

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, parenting, and communication skills; case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).

3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.

6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

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~~ *780 units* , provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills, and individual, group and family counseling. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of th

youth identified on the ISP.

3. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day, and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.

4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

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~~ *780 units* , include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation 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~~ *936 units* , include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, or education within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. A unit of service is defined as a minimum of two but less than four hours on a given day. Two units of service are defined as at least four but less than seven hours in a given day. Three units are defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Time allocated for field trips may be used to calculate time and units of service if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. 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, 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. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services such time is reimbursable. Crisis intervention may involve the family or significant others.

§ 3. Mental retardation services */Related Conditions* .

Day health and rehabilitation services shall be covered *for persons with mental retardation or related conditions* and the following definitions shall apply:

A. Day health and rehabilitation services (limited to ~~600~~ *780* 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: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;

2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;

3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;

4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;

5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;

6. Environmental skills: training in punctuality, self-discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;

7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;

8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;

9. Travel and related training to and from the training sites and service and support activities;

10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.

11. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

~~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 and/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.~~

§ 4. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

a. Mental health.

(1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.

(2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.

(3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.

(4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.

(5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program

(6) Case Management: certified by DMHMRSAS

b. Mental retardation.

(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program

(2) Case Management: Certified by DMHMRSAS

c. Related Conditions. Day Health and Rehabilitation services: Licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

§ 5. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

§ 6. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

VA.R. Doc. No. R93-652; Filed June 29, 1993, 4:12 p.m.

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Title of Regulation: **VR 460-05-1000.0000. State/Local Hospitalization Program.**

Statutory Authority: §§ 32.1-344 and 32.1-346 of the Code of Virginia.

Effective Dates: June 29, 1993, through June 28, 1994.

Summary:

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled State/Local Hospitalization Program. This regulation will provide the agency with the regulatory authority to modify the State/Local Hospitalization Fiscal Year, to limit the allocation of remaining State Funds

consistent with these regulations, and limit the use of funds allocated for one fiscal year to that year.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding State/Local Hospitalization Program. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14:7.1.

/s/ Bruce U. Kozlowski
Director
Date: June 18, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 23, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

DISCUSSION

6. BACKGROUND: The regulations affected by this action are the State/Local Hospitalization Program (VR 460-05-1000.0000).

Chapter 12, Code of Virginia § 32.1-343 through § 32.1-350 established the State/Local Hospitalization Program (SLH) within the Department of Medical Assistance Services. The purpose of the SLH program is to provide for the inpatient and outpatient hospital care of Virginians who have no health insurance and whose income falls below the federal poverty level.

The SLH program is not an entitlement program. The amount of General Fund available for this program is determined by the General Assembly each year. Payment for services provided to eligible individuals is made only to the extent that funds are available in the account of the locality in which the eligible individual resides. All counties and cities in the Commonwealth are required to participate in the SLH program.

Available funds are allocated annually by the Department to localities on the basis of the estimated total cost of required services for the locality, less the required local matching funds. Since the appropriation is insufficient to fully fund estimated cost, local allocations are actually a percentage of total need. Funds allocated to localities are maintained in locality specific accounts and can be spent only for services provided to residents of that locality.

The actual local matching rate is computed on the basis of a formula that considers revenue capacity adjusted for local per capita income. No locality's contribution will exceed 25 percent of the cost of estimated SLH services for the locality.

The statute requires that General Funds remaining at the end of the State Fiscal Year are used to offset the calculated local share for the following year. These funds are allocated among the localities first to offset increases in the local shares, then to offset calculated local shares for all localities.

The allocations for most localities are exhausted by the end of March of each year and payments for claims submitted after that date are rejected for lack of funds. A few localities have sufficient funds for all claims submitted during the year and some have a surplus at end of the year. In order to process claims before the end of state fiscal year the department has adopted, with the concurrence of the Secretary of Health and Human Services and the Department of Planning and Budget, a policy under which State/Local Hospitalization claims with service dates of May 1 and later of any year are processed for payment in the following State Fiscal Year. This cutoff for claims is necessary to allow adequate time to resolve any outstanding SLH claims and to perform the necessary accounting reconciliations for the State Fiscal Year ending June 30.

This regulation is necessary to clarify the policy adopted by the Department and is being promulgated as the result of an appeal filed by a recipient who questioned the policy because it had not been promulgated as a regulation. The proposed regulation defines the claims that are payable from the General Fund appropriation of any fiscal year as those that are for services rendered between May 1 and April 30 to the extent that funds exist in the locality allocation at the time the claim is processed. It will allow the necessary lead time to perform claims resolution and State year end reconciliation procedures.

This regulation also clarifies that funds remaining at year end are used only for the purpose of offsetting the calculated share for the following fiscal year as required by statute. This clarification is needed to prohibit possible claims against SLH funds for other purposes. Specifically, SLH funds allocated to pay for provider claims in one fiscal year would be prohibited from being used to pay claims in another fiscal year.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-344, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the State/Local Hospitalization Program for indigent persons. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1 (C) (5),

for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, this amendment to these regulations cannot become effective until the publication and concurrent comment and review period requirement of the APA's Article 2 are met. Therefore, an emergency regulation is needed for the agency to have the earliest possible effective date.

8. FISCAL/BUDGETARY IMPACT: The Code of Virginia now requires that this Department pay for all health care services authorized by the statute. These regulations do not affect reimbursement for SLH services that are accounted for in the current appropriation for FY 1992-94.

9. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective upon its filing with the Registrar of Regulations. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA, whichever occurs first. Without an effective emergency regulation, the Department would lack the authority to apply an April 30 fiscal year end, prohibit the use of SLH funds for a year in which those funds were not allocated, and ensure the appropriate allocation of funds remaining at the SLH fiscal year end.

10. Approval Sought for VR 460-05-1000.0000.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1 (C) (5) to adopt the following regulation:

VR 460-05-1000.0000. State/Local Hospitalization Program.

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:

"Allocation process" means the process described in § 32.1-345 B of the Code of Virginia, which is used annually to allocate funds appropriated by the General Assembly for this program to counties and cities of the Commonwealth.

"Board of Medical Assistance Services or BMAS" means that board established by the Virginia Code § 32.1-324 et seq.

"Bona fide resident" means an individual who has been determined by the local department of social services to be residing in the city or county where making application at the time of or immediately prior to medical treatment with the intent of remaining permanently in that locality and who did not establish residency for the purposes of obtaining benefits.

"Code" means the Code of Virginia.

"Covered ambulatory surgical center services" means those services which are provided by any distinct licensed and certified entity, established by 42 CFR 416.2, that operate exclusively for the purpose providing surgical services to patients not requiring hospitalization, which do not exceed in amount, duration, and scope those available to recipients of medical assistance services as provided in the State Plan for Medical Assistance established by Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code; and which are rendered by providers who have signed agreements to participate in the SLH program and who are enrolled providers in the MAP.

"Covered inpatient services" means inpatient services that do not exceed in amount, duration, and scope those available to recipients of medical assistance services as provided in the State Plan for Medical Assistance established by Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code and that are rendered by providers who have signed agreements to participate in the SLH program and who are enrolled providers in the MAP.

"Covered local public health services" means services provided by local health departments that do not exceed in amount, duration and scope those available to recipients of medical assistance services as provided in the State Plan for Medical Assistance established by Chapter 10 of Title 32.1 of the Code and that are rendered by providers who have signed agreements to participate in the SLH program and who are enrolled providers in the MAP.

"Covered outpatient services" means outpatient services, as performed in an outpatient hospital setting, that do not exceed in amount, duration and scope those available to recipients of medical assistance services as provided in the State Plan for Medical Assistance established by Chapter 10 of Title 32.1 of the Code and that are rendered by providers who have signed agreements to participate in the SLH program and who are enrolled providers in the MAP.

"Current population" means the most recent population of a city or county as shown by the last preceding United States census or as estimated by the Center for Public Service of the University of Virginia, whichever is more current.

"Claim" means a request for payment for services rendered.

"Department or DMAS" means the Department of

Medical Assistance Services established by § 32.1-323 of the Code.

"Director" means the Director of the Department of Medical Assistance Services established by § 32.1-323 of the Code.

"Enrolled provider or providers" means inpatient/outpatient hospitals, free-standing ambulatory surgical centers and local public health departments which have signed agreements to participate in the SLH Program and are enrolled providers in the MAP.

"Indigent person" means a person, established by Code § 32.1-343, who is a bona fide resident of the county or city, whether gainfully employed or not and who, either by himself or by those upon whom he is dependent, is unable to pay for required hospitalization or treatment. Residence shall not be established for the purpose of obtaining the benefits of this program. Aliens illegally living in the United States and migrant workers shall not be considered bona fide residents of the county or city for purposes of the SLH Program.

"SLH Payment Year" means for the purpose of this regulation a year beginning May 1 of any year and ending April 30 of the following year.

"Locality" means any city or county which is required by law to participate in the SLH Program.

"MAP or Medicaid" means the Medical Assistance Program as administered by the Department of Medical Assistance Services.

"Medical emergency" means that a delay in obtaining treatment may cause death or serious impairment of the health of the patient. See 42 CFR 440.170(e).

"Net countable income" means the value of income using the current budget methodology of the Virginia Aid to Dependent Children Program.

"Net countable resources" means the countable value of an applicant's resources using the current budget methodology of the Virginia Aid to Dependent Children Program.

"Payable claim" means a claim for a covered service rendered to an eligible individual with a date of service in the current SLH payment year provided that the claim is submitted for payment before the last payment processing cycle in June and provided there are funds available in the allocation for the locality of residence of the eligible individual.

"SLH Program" means the State/Local Hospitalization Program.

"State Plan" means the State Plan for Medical Assistance for the Commonwealth.

PART II.
SLH PROGRAM ESTABLISHED.

§ 2.1. The State/Local Hospitalization Program is hereby established, within the Department of Medical Assistance Services (DMAS), for indigent persons. The Director of the Department shall administer this program and expend state and local funds in accordance with the provisions of Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code.

§ 2.2. From the appropriation made by the General Assembly each State fiscal year, the Director shall allocate funds to each locality in accordance with provisions of § 32.1-345, Code of Virginia. These allocations will be used for the sole purpose of processing payable claims for that year.

PART III.
SERVICES COVERED.

§ 3.1. Amount, duration, and scope of services covered.

The amount, duration, and scope of services covered by the SLH Program shall be equal to the amount, duration, and scope of the same services covered by the MAP established by the State Plan. SLH services shall be limited to inpatient and outpatient hospital services; and to services rendered in free-standing ambulatory surgical centers and local public health departments.

§ 3.2. Changes in amount, duration, and scope of services covered.

Changes in the amount, duration, and scope of services covered by the MAP shall, unless modified by the BMAS, automatically change the amount, duration, and scope of services covered by the SLH Program.

§ 3.3. Inpatient hospital reimbursement rate.

The daily inpatient hospital reimbursement rate shall be the same as that per diem rate established and in effect on June 30 of each year by DMAS for the specific hospital established by § 32.1-346 B 2 of the Code. Inpatient hospital reimbursement rates for SLH services shall not be subject to readjustment through the year-end cost reporting process.

§ 3.4. Local health department and outpatient hospital clinics reimbursement.

Reimbursement to local health departments and outpatient hospital clinics shall be an all inclusive fee per visit and at the rate established by § 32.1-346 B 1 of the Code. Outpatient hospital clinics reimbursement rates shall not be subject to readjustment through the year-end cost reporting process.

§ 3.5. Emergency services reimbursement.

Reimbursement for hospital emergency room servic

shall be an all inclusive fee per visit and shall be reimbursed at the rate established by § 32.1-346 B 4 of the Code. Emergency room services reimbursement rates shall not be subject to readjustment through the year-end cost reporting process.

PART IV.
ELIGIBILITY.

§ 4.1. Eligibility criteria.

An individual is eligible to receive SLH Program services if he:

1. Has filed an application with the locality where he resides within 30 days of discharge, in the case of inpatient services, or within 30 days of the date of service, in the case of outpatient services;

2. Is a bona fide resident of the locality to which he has applied;

3. Has a net countable income, using the current budget methodology of the Virginia Aid to Dependent Children Program, equal to or less than 100% of the federal non-farm poverty income guidelines as published for the then current year in the United States Code of Federal Regulations (CFR), except that localities which in fiscal year 1989 used a higher income level may continue to use the 1989 income level in subsequent years; and

4. Has net countable resources, using the current budget methodology of the Virginia Aid to Dependent Children Program, equal to or less than the then current resource standards of the federal Supplemental Security Income Program (SSI).

§ 4.2. Length of effective period of application.

An eligibility decision favorable to the applicant shall remain in effect for a period of 180 days. If the recipient requires further medical treatment during the eligibility period, no new application shall be required. If the eligibility period has expired a new application shall be required.

§ 4.3. Persons eligible for Title XIX services.

Persons who have been determined eligible for services as defined by and contained in the Social Security Act Title XIX shall not be eligible for SLH Program benefits established by § 32.1-346 B 3 of the Code.

§ 4.4. Appeal.

An applicant for SLH may appeal an appealable adverse determination regarding eligibility for services or liability for excess payments as defined in § 32.1-349 of the Code. SLH appeals will follow the procedures established by Medicaid for client appeals. Exhaustion of appropriated funds in a given locality for payment of SLH services is not an appealable issue. *Funds allocated for one Fiscal Year shall not be used to pay for provider claims in another Fiscal Year.*

PART V.
ALLOCATION OF REMAINING STATE FUNDS.

§ 5.1. State funds remaining at the end of the fiscal year.

State funds remaining at the end of the fiscal year shall be used as an offset to the calculated local share for the following year. The funds shall be allocated among localities in accordance with a procedure established by DMAS to ensure that state funds remaining at the end of the fiscal year are used first to offset increases in calculated local shares, then to offset calculated local share for all localities. Remaining state funds shall be applied toward offsetting calculated local share only and shall not be added to a locality's base allocation. *State funds remaining at the End of the State Fiscal Year shall not be used for other purposes including payment for claims rendered in a prior SLH payment year.*

PART VI.
LIABILITY FOR EXCESS PAYMENTS.

§ 6.1. Determination of liability for excess payments.

The department shall be empowered to recover excess SLH payments. Such disputes shall be heard in accordance with the Administrative Process Act. Potential fraud cases shall be referred to the appropriate law-enforcement agency.

VA.R. Doc. No. R93-650; Filed June 29, 1993, 4:13 p.m.

BOARD FOR OPTICIANS

Title of Regulation: **VR 505-01-1:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Dates: June 29, 1993, through June 28, 1994.

Preamble:

The Board for Opticians intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of opticians in Virginia.

Pursuant to the Administrative Process Act, the Board for Opticians is required to promulgate public participation guidelines before any further regulatory

action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 29, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

VR 505-01-1:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Opticians (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation he may suspend the regulatory process for thirty days t

require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-618; Filed June 29, 1993, 11:41 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Title of Regulation: **VR 190-00-02. Employment Agencies Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1302 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

The Director intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of employment agencies in Virginia.

Pursuant to the Administrative Process Act, the Director is required to promulgate public participation guidelines before any further regulatory action can commence. The Director shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 30, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1993

VR 190-00-02. Employment Agencies Public Participation Guidelines.

§ 1. Mailing list.

The Department (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or

publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The agency intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-689; Filed June 30, 1993, 11:51 a.m.

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Title of Regulation: **VR 190-00-03. Polygraph Examiners Advisory Board Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Dates: June 24, 1993, through June 23, 1994.

Preamble:

The Director intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of polygraph examiners in Virginia.

Pursuant to the Administrative Process Act, the Director is required to promulgate public participation guidelines before any further regulatory action can commence. The Director shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 23, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 24, 1993

VR 190-00-03. Public Participation Guidelines.

§ 1. Mailing list.

The Department (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency

received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The agency intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-592; Filed June 24, 1993, 2:30 p.m.

REAL ESTATE APPRAISER BOARD

Title of Regulation: **VR 583-01-01:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2013 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

The Real Estate Appraiser Board intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of appraisers in Virginia.

Pursuant to the Administrative Process Act, the Real Estate Appraiser Board is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 29, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 30, 1993

VR 583-01-01:1. Public Participation Guidelines.

§ 1. Mailing list.

The Real Estate Appraiser Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of

any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-677; Filed June 30, 1993, 11:52 a.m.

REAL ESTATE BOARD

Title of Regulation: **VR 585-01-0:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2105 of the Code of Virginia.

Effective Dates: June 29, 1993, through June 28, 1994.

Preamble:

The Real Estate Board intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of real estate salespersons and brokers in Virginia.

Pursuant to the Administrative Process Act, the Real Estate Board is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 25, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 29, 1993

VR 585-01-0:1. Public Participation Guidelines.

§ 1. Mailing list.

The Real Estate Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-619; Filed June 29, 1993, 11:40 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-01-43. Aid to Families with Dependent Children (AFDC) Program - Fifth Degree Specified Relative.**

Statutory Authority: §§ 63.1-25 and 63.1-110 of the Code of Virginia.

Effective Dates: July 1, 1993, through June 30, 1994.

Preamble:

The Aid to Families with Dependent Children (AFDC) Program is a federally mandated financial assistance program authorized under Title IV, Part A, of the Social Security Act and federal regulations found in Title 45 of the Code of Federal Regulations. In Virginia, the program is supervised by the Virginia Department of Social Services; however, the program is administered by 124 local social services agencies. The program is intended to provide cash assistance on behalf of needy children who are deprived of parental support and care by reason of death, continued absence, incapacity, or unemployment of at least one parent. The program is funded through a combination of federal and state monies.

The purpose is to allow a child who is living with a relative of fifth degree to qualify for AFDC with regard to the specified relative requirement. Current federal regulations only mandate that relatives of fourth degree meet the specified relative definition. Fifth degree relatives include a first cousin once removed (child of a first cousin), great great great grandparents, great great aunt or uncle, etc. This proposal would allow children who would not be eligible simply due to the specified relative requirement to qualify for AFDC.

If adopted, all 124 local social services agencies will be required to implement the proposed regulation when determining eligibility for assistance in the AFDC Program. The proposed regulation will only affect individuals on AFDC, but will have no impact on individual citizens, organizations, or businesses including those classified as "eligible small business."

The inability to promulgate the proposed policy for permanent status precludes eligibility for AFDC for needy children who meet all criteria for AFDC except for the specified relative requirement. Children who are rendered ineligible for this reason often must be placed in foster homes or receive General Relief, when possible. Such alternatives are not necessarily in the best interest of the child.

Additionally, in the absence of this regulation, the department will be in violation of an agreement made in respoonse to a civil action against the department and HHS in 1985. At that time, a Stipulation of Compromise Settlement was signed agreeing that the Commonwealth's AFDC Program would be revised accordingly upon issuance of an interpretation by HHS expanding eligibility to children having a fifth degree of kinship with the caretaker relative with whom they reside.

The current regulation concerning fifth degree relationships is in the process of being amended. However, legislation enacted by the Virginia General Assembly significantly changed the Administrative Process Act (APA) and the requirements by which regulations must be promulgated. The legislation further specified that any regulation that cannot be adopted prior to July 1, 1993, must be re-promulgated pursuant to the new APA requirements. Since the changes approved by the State Board of Social Services cannot be promulgated and adopted before July 1, 1993, an emergency regulation must be promulgated.

Summary:

This regulation will adopt the option set forth in the Administration for Children and Families (ACF) Action Transmittal 91-33 dated December 12, 1991, issued by the Department of Health and Human Services (HHS), which allows all states when making a determination of a specified relative under Section 402 of the Social Security Act, to recognize a specified caretaker relative to be any relation by blood, marriage or adoption who is within the fifth degree of kinship to the dependent child. This document from HHS further states that it intends to use the civil law method of determining degrees of kinship which has been adopted in most jurisdictions by statute or court decision. The federal action transmittal (attached) interprets the federal regulation, 45 CFR 233.90 (c) (1) (V) (A) (1), to recognize a specified caretaker relative to be any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child as determined by the civil law method of computing degrees of kinship. However, until these federal regulations are revised and issued, this proposed regulation will remain an option to states.

VR 615-01-43. Aid to Families with Dependent children (AFDC) Program - Fifth Degree Specified Relative.

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:

"Aid to Dependent Children (AFDC) Program" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Specified Relative" means the degree of relationship which must exist between a caretaker and a dependent child in order for the caretaker relative to qualify for assistance under this program.

PART II.
FIFTH DEGREE RELATIVE OF SPECIFIED DEGREE.

Specified relatives - The relative with whom the child is living, who is designated as the caretaker, must be one of the following:

1. A blood relative: mother; father, including the father who is not married to the child's mother when evidence of paternity exists as described in Section 201.4 of the Virginia Department of Social Services Aid to Families with Dependent Children Manual; brother; sister; uncle; aunt; nephew; niece; first cousin. This definition includes the above relatives, if of half-blood, and those of preceding generations as denoted by prefixes of grand, great, or great great.

2. A stepmother, stepfather, stepbrother, or stepsister.

3. A relative by adoption following entry of the interlocutory order: the same relatives, by adoption, as listed in the two preceding groups.

4. A relative by marriage: the spouse of any person specified in the three preceding groups even after the marriage is terminated by death or divorce.

5. Any relation by blood, marriage, or adoption who is within the fifth degree of kinship to the dependent child. Such relationships include great great great grandparents, great great uncle or aunt or a first cousin once removed, etc.

/s/ Larry D. Jackson
Commissioner
Date: June 22, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1993

/s/ Joan W. Smith
Registrar
Date: June 29, 1993

VA.R. Doc. No. R93-632; Filed June 29, 1993, 1:55 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: **VR 625-00-00:1. Regulatory Public Participation Procedures.**

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-603.18, 10.1-605 and 10.1-637 of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 625-00-01:1 establishes amended Regulatory Public Participation Procedures (RPPPs) for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations. Legislation enacted by the General Assembly which goes into effect on July 1, 1993, imposes new requirements on agencies of state government for processing rulemakings under the Administrative Process Act (Act).

One of the new requirements of the amended Act mandates that the Virginia Soil and Water Conservation Board (Board) include as part of their RPPPs a general policy for the use of standing or ad hoc advisory groups and consultation with groups and individuals registering interest in working with the Board. Such policy shall address the circumstances in which the Board considers such groups or consultation appropriate and intends to make use of such panels or consultation.

The legislation further requires the Board to set out in their RPPPs any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the Board intends to use in addition to the Notice of Intended Regulatory Action.

Beginning on July 1, 1993, the new legislation will require RPPPs to contain such provisions. Because RPPPs must be in compliance with the Act before the Board can initiate any regulatory actions, it is important that RPPPs that will satisfy the new requirements of the Act be in place and ready for use before July 1, 1993. In addition, because the provisions of the RPPPs are a declaration of the means by which the public is involved in Board regulation making, the Board has, on a limited basis, amended language of the RPPPs as to reflect current Board practices and to accommodate soon-to-take-effect requirements of the Act. For example, the RPPPs have been amended to allow the Board, at its discretion, to begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit input.

Nature of Emergency:

The Board proposes to adopt emergency RPPPs in order to ensure the Board's ability to process necessary regulatory actions after July 1, 1993. The Board is responsible for the administration of several State programs, whose purpose is to protect and enhance the quality of the Commonwealth's soil and water resources. Without RPPPs which satisfy the new requirements of the Act, the Board will be unable to process any regulatory actions until such time as permanent RPPPs can be adopted. Under the Act, it could take as long as a year to adopt permanent RPPPs which would result in necessary regulatory actions taking as much as 2 years to complete.

Necessity for Action:

The adoption of emergency RPPPs is critical to continued operation of the programs of the Board. For example, legislation passed by the 1993 session of the General Assembly amended various provisions of the Erosion and Sediment Control program which will require amending the regulations promulgated for administration of the program. Without emergency RPPPs, the Board would be unable to incorporate and implement any amended provisions for approximately 2 years. Since these amendments benefit localities and citizens, failure to proceed as soon as possible could impose unnecessary hardship on the Commonwealth's localities and citizens.

Summary:

This regulation will establish RPPPs which will allow the Board to initiate regulatory action processes after July 1, 1993 to adopt, amend or repeal necessary regulations.

This emergency regulation will be enforced under applicable statutes and remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Act and this emergency regulation.

The Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ J. Franklin Townsend, Jr.
Chairman, Virginia Soil and Water Conservation Board
Date: June 23, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1993

VR 625-00-00:1. Regulatory Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this regulation, 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.

"Agency" means the Department of Conservation and Recreation, including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Virginia Soil and Water Conservation Board, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Virginia law" means the provisions found in the Code of Virginia or the Virginia Acts of Assembly authorizing the approving authority, director, or agency to make regulations or decide cases or containing procedural requirements thereof.

Unless specifically defined in Virginia law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 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 § 9-6.14:1 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 director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

~~C.~~ *B.* 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.~~ *C.* Any person may petition the approving authority 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.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. Whenever the approving authority so directs or upon the director's initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The ~~agency~~ *Director* shall form an ad hoc advisory group , ~~or~~ utilize a standing advisory committee , *or consult with groups and individuals registering interest in working with the agency* to assist in the drafting and formation of the proposal ~~unless the approving authority specifically authorizes the director to proceed without utilizing an ad hoc advisory group or standing advisory committee.~~ *when:*

1. a. The Director, in the Director's sole discretion, determines to form an ad hoc advisory group, utilize a standing advisory committee, or consult with group and individuals registering interest in working with the

agency; or

b. The agency receives written comments from at least 25 persons during the comment period of the notice of intended regulatory action (NOIRA) requesting the Director to form an ad hoc advisory group, utilize a standing advisory group, or consult with groups and individuals registering interest in working with the agency; and,

2. The subject matter of the NOIRA has not been previously the subject of a NOIRA published in the Register of Regulations by the agency.

When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public.

D. The agency shall issue a ~~notice of intended regulatory action (NOIRA)~~ *NOIRA* whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A brief statement as to the need for regulatory action.

b. A brief description of alternatives available, if any, to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.

d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

e. A statement of the Director's intent to hold at least one informational proceeding or public hearing on the proposed regulation after it is published.

f. A statement inviting comment on whether the Director should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of the proposal, unless the Director has already determined to form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups and individuals pursuant to subdivision 1 of subsection 3.C.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the director to proceed without holding a public meeting *or the Director specifically determines the agency can proceed without holding a public meeting in those cases where the subject matter of the NOIRA has been previously the subject matter of a NOIRA published in the Register of Regulation by the agency .*

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in the Virginia Register, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in the Virginia Register.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may ~~prepare~~ *complete* the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established, *a standing advisory committee utilized, or groups and individuals consulted,* the draft regulation shall be developed in consultation with ~~such group~~ *the selected advisor* . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group *, standing advisory committee or groups and individuals* 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 approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. The identity of any locality particularly affected by the proposed regulation. For purposes of these procedures the term "locality particularly affected" shall mean any locality which bears any identified

disproportionate material impact which would not be experienced by other localities.

~~4.~~ *5.* A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation.~~ *the rationale and justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.*

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost , *expressed as a dollar figure or range,* to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency 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.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. 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.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

~~5.~~ *6.* The date, time and place of at least one ~~public hearing~~ *informational proceeding* held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.) The ~~hearing(s)~~ *informational proceeding(s)* may be held at any time during the public comment period and, whenever practicable, no less than 10 days prior to the close of the public comment period. The ~~hearing(s)~~ *informational proceeding(s)* may be held in such location(s) as the agency determine will best facilitate input from interested persons.

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in the Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capitol and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, and the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the director determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the director shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

~~A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to December 30, 1992, shall be processed in accordance with the VR 625-00-00. Public Participation Guidelines.~~

~~B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to December 30, 1992, shall be processed in accordance with this regulation (VR 625-00-00:1. Regulatory Public Participation Procedures).~~

The amending provisions contained in this emergency regulation shall apply only to regulatory actions for which a NOIRA is filed with the Registrar of Regulations at or after the time these regulations take effect.

VA.R. Doc. No. R93-593; Filed June 25, 1993, 3:25 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 680-14-16 establishes a general VPDES permit for storm water discharges associated with industrial activity from heavy manufacturing facilities. The Clean Water Act requires certain facilities with point source discharges of storm water associated with industrial activity to submit a permit application under the National Pollutant Discharge Elimination System (NPDES) permits program. Virginia operates this program as the VPDES permits program. This proposed regulation will allow "heavy manufacturing" facilities to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these facilities. This proposed regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This proposed regulation will: (1) define the facilities classified as "heavy manufacturing" which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

In Virginia there are an estimated 1250 facilities classified as "heavy manufacturing" that may be required to submit a permit application under the federal storm water regulations. Facilities covered by this regulation were required to apply for a storm water permit by October 1, 1992, using one of three application options: (1) individual application; (2) group application; and (3) general permit "Notice of Intent."

Since Virginia did not have storm water general permits available prior to EPA's October 1, 1992 deadline, an emergency regulation (VR-680-14-15) was passed by the State Water Control Board on September 22, 1992. The emergency regulation allowed industrial facilities to file a Registration Statement indicating their intent to be covered by a storm water general permit that would subsequently be developed.

The Department staff has developed a general permit for storm water discharges associated with industrial activity from heavy manufacturing facilities. This general permit is based upon EPA's storm water general permit that was published in the Federal Register on September 9, 1992. In developing this general permit, EPA's general permit was modified to make it specific to Virginia.

The general permit requires the development and implementation of a pollution prevention plan by the permittee. The purpose of the pollution prevention plan is to identify potential sources of storm water pollution and to describe and ensure the implementation of best management practices to reduce the pollutants in storm water discharges. The general permit requires inspections to be conducted to identify sources of pollutants and to evaluate whether the pollution prevention measures are adequate and are being effectively implemented.

Effluent limitations and monitoring requirements in the general permit are established for selected industrial activities based upon the industries' potential for contributing pollutants to storm water discharges. These requirements are intended to ensure compliance with the requirements of the permit and to protect water quality.

As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. A permit fee will be required from the applicant for the issuance of the general permit. The proposed regulation will authorize storm water discharges associated with industrial activity from these facilities in the most effective, flexible, and economically practical manner to assure the improvement of water quality in State waters.

Nature of the Emergency:

Due to unforeseen complications associated with the

1993 revisions to the Virginia Administrative Process Act, the draft storm water general permit regulation which was scheduled to be adopted by the State Water Control Board in August will have to be taken through the rulemaking process again starting on July 1. This will make it impossible to have a storm water general permit in place prior to the expiration of the emergency regulation (VR 680-14-15) on September 22. If the storm water general permit is not adopted as an emergency regulation, the facilities which have applied under the old emergency regulation must reapply for an individual VPDES storm water permit for their storm water discharges. This will involve sampling a "representative" storm event, the completion and filing of an application form, and the payment of the "individual" permit application fee. It is unlikely that the impacted facilities will be able to sample a representative storm event, and complete and submit the new application form before September 22. Consequently, at that time they will be subject to penalties for unauthorized discharges of storm water.

Necessity for Action:

The Department proposes to adopt a general VPDES permit for storm water discharges associated with industrial activity from heavy manufacturing facilities. By adopting this general permit as an emergency regulation, the Department can begin covering these storm water dischargers immediately. The general permit emergency regulation would expire one year from its effective date. By that time the Department will have taken the regulation through the administrative process for permanent adoption.

The Department recognizes the need for this general permit to ease the burden on the regulated community and to facilitate the issuance of storm water permits. 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 Department for permitting these discharges. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Summary:

This regulation will establish a general VPDES permit for storm water discharges associated with industrial activity from heavy manufacturing facilities. The regulation will allow industrial facilities to submit a Registration Statement as an application discharge of storm water associated with industrial activity from these facilities. The regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The Department will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton
Director
Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01:1 (Permit Regulations) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Industrial Activity" - the following categories of facilities are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992), except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition;

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987) and as further defined as heavy manufacturing facilities;

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim;

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operation, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act. (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to,

raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 2 of the definition of industrial activity, heavy manufacturing facilities, as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from heavy manufacturing facilities provided that the discharge is through a point source to surface waters of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), (14) of § 62.1-44.15; and §§ 62.1-44.15:6, 62.1-44.16, 62.1-44.17, 62.1-44.20, 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Complete Registration Statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on June 30, 1993. This general permit will expire one year from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, files the permit fee required by § 9, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulatio or policies prohibit such discharges.

3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a VPDES permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharge and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner of a heavy manufacturing facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall file a complete VPDES general permit registration statement in accordance with this regulation. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file a complete registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT
FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES

1. Facility Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

2. Facility Location

Name: . . . . . .

Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

If street address unavailable: . . . . Lat . . . . Long

3. Status: . . . . . (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification (SIC) Code: . . . . . .

Secondary SIC Codes: . . . . . .

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? . . . Yes . . . No

If yes, operator name of the MS4 . . . . . .

6. Receiving Water Body (e.g., Clear Creek or unnamed Tributary to Clear Creek): . . . . . .

7. Other Existing VPDES Permit Numbers: . . . . . .

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals? . . . . . .

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code § 62.1-44.15:3.

10. Certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate,

and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

.....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

Basin. . . . Stream Class . . . . . Section . . . . .

Special Standards

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES

1. VPDES Storm Water General Permit Number: . . . . . .

2. Check here if you are no longer the owner/operator of the facility: . . . . . .

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated: . . . . . .

4. Facility Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

5. Facility Location

Name: . . . . . .

Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

6. Certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act."

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

.....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the Permit Regulation (VR 680-14-01).

General Permit No.: VAR16xxxx

Effective Date: June 30, 1993

Expiration Date: June 30, 1994

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners/operators of heavy manufacturing facilities with

storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation or policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, Part III - Storm Water Pollution Prevention Plan, and Part IV - Management Requirements, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Phosphorus (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute whole effluent toxicity	NA	NL	1/6M	Grab**
Section 313 water priority chemicals***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at facilities that are classified as **Standard Industrial Classification (SIC) 33 (Primary Metal Industry).**

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Cadmium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Arsenic (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Chromium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Dissolved Hexavalent Chromium (ug/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Effluent Guideline Pollutants***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

4. Facilities classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for cadmium, copper, arsenic, chromium or acute whole effluent toxicity but must monitor for the other parameters listed above.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities classified as **Standard Industrial Classification (SIC) 24 (Lumber and Wood Products)**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Pentachlorophenol (ug/l)***	NA	NL	1/6M	Grab/Composite**
Copper (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Arsenic (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Chromium (total recoverable) (ug/l)***	NA	NL	1/6M	Grab/Composite**
Acute Whole Effluent Toxicity***	NA	NL	1/6M	Grab**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Facilities that use chlorophenolic formulations shall measure for pentachlorophenol and acute whole effluent toxicity.
Facilities that use creosote formulations shall measure for acute whole effluent toxicity.
Facilities that use chromium-arsenic formulations shall measure for arsenic, chromium and copper.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources containing coal pile storm water runoff.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Total Suspended Solids (mg/l)	NA	50 mg/l	1/6M	Grab**
pH (SU)	6.0	9.0	1/6M	Grab**
Copper (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Nickel (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**
Zinc (total recoverable) (ug/l)	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. Coal pile runoff shall not be diluted with storm water or other flows in order to meet these limitations.
4. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to the 50 mg/l limitation for total suspended solids. Failure to demonstrate compliance with these limitations as expeditiously as practicable, but in no case later than October 1, 1996, will constitute a violation of this permit.
5. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity that comes in contact with storage piles for solid chemicals used as raw materials at facilities classified as Standard Industrial Classification (SIC) 28 (Chemicals and Allied Products) except SIC 283 (Drugs).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge from the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity that comes in contact with lime storage piles that are exposed to storm water at **lime manufacturing facilities**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at **cement manufacturing facilities and cement kilns**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at facilities classified as **Standard Industrial Classification (SIC) 3273 (Ready Mix Concrete)**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at facilities classified as **Standard Industrial Classification (SIC) 373 (Ship and Boat Building and Repairing)**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample shall be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART II.
MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992)).

3. The sampling and analysis program to demonstrate compliance with the permit shall, at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration, in hours, of the storm event(s) sampled;

8. The rainfall measurements or estimates, in inches, of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the State Water Control Law, Clean Water Act or the Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department's Regional Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect

surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The Department's Regional Office may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department's Regional Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Department's Regional Office cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement and Notice of Termination.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency, by either a principal executive officer or ranking elected official. A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or had executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 a, 1 b, or 1 c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is make in writing by a person described in subdivision 1 a, 1 b, or 1 c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain with the other records and information resulting from monitoring activities as required under subsection C of this part, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, or electrical storms) or otherwise make the collection of a sample impracticable (drought or extended frozen conditions). Dischargers are precluded from exercising this waiver more than once during this permit term. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area, in square feet, and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of this part (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made a part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR Part 122 (1992) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameters identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test Procedures. The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms, (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted twice per year on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm

water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by January 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after June 30, 1993, 180 days after submitting a Registration Statement to be covered by this permit but in no case later than June 30, 1994. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe the procedure of any test conducted for the presence of nonstorm water discharges; the results of such test or other relevant observations; potential sources of nonstorm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan by June 30, 1994.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to subdivisions D 7 (EPCRA Section 313) and D 8 (salt storage) of this part shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable but not later than June 30, 1994.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements) and be retained on-site at the facility which generates the storm water discharge in accordance with subsection C

of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, his authorized representative, or, in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director or authorized representative may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director (or as otherwise provided by the director) or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or when the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 (description of potential pollutant sources) of this part of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c (spills and leaks) of this part of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to

the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators or catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Nonstorm water discharges.

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notif the director in accordance with subsection O of Pa

II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision M 2 of Part II (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or sources of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 (description of potential pollutant sources) of this part of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention or retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once during the permit term. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 (description of potential pollutant sources) of this part of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 (measures and controls) of this part of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs

otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to Know Act (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by paragraph

subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and- closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume, in gallons, of discharges from containment areas, in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivision D 7 b (1), (2), (3) or (4)) of this part, from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to surface waters of the state, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges, shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as Section 313 water priority chemicals where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to surface waters of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than June 30, 1994. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of termination.

1. The owner of the facility shall submit a Notice of Termination to the director that is signed in accordance with subsection G of Part, where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a new registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

B. Treatment works operation and quality control.

All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

1. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

2. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

3. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited.

G. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

H. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, or any infringement of federal, state, or local laws or regulations.

I. Severability.

The provisions of this permit are severable.

J. Duty to reregister.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee shall submit a new and complete registration statement at least 120 days before the expiration date of this permit.

K. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials to:

1. Enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) are located or in which any records are required to be kept under the terms and conditions of this permit;

2. Have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. Inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. Sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. Inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The director does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

M. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the Department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Law. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et. seq. and 62.1-44.21 of the Code of Virginia). Notwithstanding the foregoing, any supplemental information that the Department may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of (TSIA).

Claims of confidentiality for the following information will be denied.

1. The name and address of any permit applicant or permittee.

2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information

submitted on the forms themselves and any attachments used to supply information required by the forms.

N. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards, or the level which can be achieved by technology-based treatment requirements appropriate to the permittee;

O. Permit termination.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation (VR 680-14-01) and in accordance with other sections of this permit (subsections N, O and Q of this part).

Q. When an individual permit may be required.

The director may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharge(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a general permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for hearing.

R. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental (i) to the public health, (ii) to animal or aquatic life, (iii) to the uses of such waters for domestic or industrial consumption, (iv) for recreation, or (v) for other uses.

§ 9. Permit fee.

Notwithstanding the requirements of VR 680-01-01, for the purposes of this emergency regulation only, the fee for issuance of general permits under this emergency regulation shall be $40.

FACT SHEET

ISSUANCE OF A GENERAL VPDES PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES

AUTHORIZATION TO DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM HEAVY MANUFACTURING FACILITIES UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

The Virginia State Water Control Board has under consideration the issuance of a VPDES general permit for storm water discharges associated with industrial activity from heavy manufacturing facilities.

Permit Number: VAR16xxxx

Name of Permittee: Any owner of a heavy manufacturing facility with storm water discharges associated with industrial activity in the Commonwealth of Virginia, agreeing to be regulated under the terms of this General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except designated public water supplies or water where Board Regulations or Policies prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue the General Permit subject to certain conditions and has prepared a draft permit. It has been determined that this category is appropriately controlled under a General Permit. The category involves heavy manufacturing facilities defined as facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget SIC Manual, 1987).

The draft General Permit requires that all facilities which generate a storm water discharge associated with industrial activity to surface waters of the state meet standardized effluent limitations and monitoring requirements and requirements to develop a site-specific storm water pollution prevention plan.

Proposed Effluent Limitations and Monitoring Requirements

An annual comprehensive site compliance evaluation is required of all facilities with several specific types of facilities having effluent limitations and monitoring requirements. The effluent limitations and monitoring requirements are set according to the type of industrial facility, type of industrial activity occurring or the materials present at the facility. These requirements are consistent with EPA's general permit for storm water discharges associated with industrial activity. This permit also provides an exemption from monitoring requirements for outfalls that do not have any materials, material handling equipment, industrial machinery or industrial operation exposed to storm water located within the drainage area of the outfall. An annual certification of this exemption is required and must be retained on site. Results of all monitoring are to be retained for a period of 3 years from the date of the analysis or for one year after the permit terminates, whichever is later.

The following select types of industrial facilities or industrial activities have effluent limitations and/or semiannual monitoring requirements:

1. Facilities subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes in contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled. These facilities are required to monitor for Oil and Grease, BOD5, Chemical Oxygen Demand, Total Suspended Solids, Total Kjeldahl Nitrogen, Total Phosphorus, pH, acute whole effluent toxicity and any Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of EPCRA and where there is the potential for these chemicals to mix with storm water discharges. These facilities that manufacture, import or process, or have other use of large amounts of toxic chemicals can potentially be a significant source of toxic pollutants to storm water;

2. Facilities that are classified as Standard Industrial Classification 33, Primary Metal Industries are required to monitor for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, total recoverable lead, total recoverable cadmium, total recoverable copper, total recoverable arsenic, total recoverable chromium, pH, acute whole effluent toxicity and any pollutant limited in an effluent guideline to which the facility is subject. Facilities that manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for cadmium, copper, arsenic, chromium or acute whole effluent toxicity. Due to the nature of the processes and activities commonly occurring at these facilities, a number of sources can potentially contribute significant amounts of pollutants to storm water. These include outdoor storage and material handling activities, particulate and dust generating processes and waste material management;

3. Areas used for wood treatment, wood surface application or storage of treated or surface protected

wood at any wood preserving or wood surface facilities classified as Standard Industrial Classification 24, Lumber and Wood Products. These facilities must monitor for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, and pH. Facilities that use chlorophenolic formulations must also monitor for pentachlorophenol and acute whole effluent toxicity, facilities that use creosote formulations must also monitor for acute whole effluent toxicity, and facilities that use chromium-arsenic formulations must also monitor for total recoverable arsenic, total recoverable chromium and total recoverable copper. Previous studies conducted by EPA showed several organic pollutants were found at significant concentrations in storm water runoff from the material storage yards at these types of facilities; and

4. Coal pile runoff has effluent limitations of 50 mg/l instantaneous maximum Total Suspended Solids and a pH range of 6.0-9.0. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff which is associated with a 10 year, 24 hour rainfall event shall not be subject to this limitation. This is consistent with the effluent limitation guideline for coal pile runoff in the steam electric category (40 CFR 434). These facilities must also monitor for Oil and Grease, total recoverable copper, total recoverable nickel, and total recoverable zinc.

The acute whole effluent toxicity testing was included with several of the above industrial activities as an efficient method of assessing the toxicity potential of complex mixtures of pollutants in storm water, to assist in identifying pollutant sources, and as a measure of the effectiveness of a facility's pollution prevention plan and is generally not intended to directly evaluate toxic effects on organisms in receiving waters. A 24-hour test using 100 percent storm water effluent serves a an initial screen for evaluating whether a discharge potentially contributes to water quality impairment. This permit allows flexibility for the selection of appropriate invertebrate and fish species. The acute whole effluent toxicity testing requirements are consistent with EPA's general permit for storm water discharges associated with industrial activity.

An alternative to whole effluent toxicity testing is given in the permit. These dischargers can either analyze for whole effluent toxicity or for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility. These options allow a facility to monitor for whole effluent toxicity which focuses on the use of a single parameter with the ability to identify the potentially toxic character of mixtures of chemicals in water or to analyze the storm water for specific chemicals that the discharger knows or has reason to believe are present at the facility site. Permittees may consider what would be most appropriate for their facility when choosing a sampling option.

The following select types of industrial facilities or industrial activities must conduct annual monitoring for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, pH and any pollutant limited in an effluent guideline to which the facility is subject. These requirements are based on the consideration of specific activities having a significant potential for contributing pollutants to storm water.

1. Facilities classified as Standard Industrial Classification 28, Chemicals and Allied Products where storm water discharges associated with industrial activity come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation.

2. Lime manufacturing facilities where storm water discharges associated with industrial activity come in contact with lime storage piles that are exposed to storm water.

3. Cement manufacturing facilities and cement kilns.

4. Facilities classified as Standard Industrial Classification 3273, Ready Mix Concrete.

5. Facilities classified as Standard Industrial Classification 373, Ship and Boat Building and Repairing.

Minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity were developed by EPA. EPA established that at least an annual inspection be conducted at the site which provides sufficient flexibility to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Several factors were taken into consideration when evaluating this issue. The potential difficulties of collection of storm water samples which include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country and variability in flow rates. The types and concentrations of pollutants in the storm water discharges depend on the nature of the industrial activities occurring at the site, the nature of the precipitation event, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in results collected. Requiring each facility to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by the state. A significant amount of permitting resources dedicated to reviewing and filing these reports would be necessary.

In establishing the minimum monitoring and reporting requirements for storm water discharges from heavy manufacturing facilities, it was determined that requiring a

comprehensive site evaluation once during the permit term for all facilities would allow for the identification of areas contributing to a storm water discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Effluent limitations and monitoring requirements for selected industrial activities which, due to the nature of the industrial activity or materials stored or used on site, have significant potential for contributing pollutants to storm water are necessary to ensure compliance with the requirements of the permit and to protect water quality. The information obtained from this monitoring will assist and supplement efforts to identify pollutant sources and evaluate the effectiveness of the pollution prevention requirements.

This general permit requires the development of a storm water pollution prevention plan with one component of that plan being an annual comprehensive site compliance evaluation. Where permits require the implementation of pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide an acceptable indication of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on many facilities. The permittee is also required to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the minimum requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to insure the effective implementation of pollution prevention plans.

Proposed Requirements for the Development of a Storm Water Pollution Prevention Plan

The permittee is required to develop a storm water pollution prevention plan. The plan is intended to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges and describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges.

The Clean Water Act requires that all NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements. This permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans and thus, is consistent with the requirements of the CWA. Currently, there is not sufficient data to develop appropriate numeric effluent limitations for storm water discharges from all the varied sources of storm water discharges associated with industrial activity covered by this permit. The facilities covered by this permit have varied potential for having different pollutants in their storm water discharges.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. This adequately addresses the variable storm water management/pollution prevention opportunities available at a facility. The varying sizes and complexities of the facilities should be reflected in the storm water pollution prevention plan. These plans are required to achieve BAT/BCT requirements in lieu of numeric limitations. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in storm water discharges and provide for flexibility for developing tailored plans and strategies. This permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in storm water discharges and are necessary to reflect BAT/BCT. These components include the formation of a pollution prevention team, a description of pollutant sources, identification and implementation of measures and controls and a comprehensive site compliance evaluation.

The permittee is to consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts. The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and no-water quality environmental impacts.

Other Regulatory Considerations

The General Permit will have a fixed term of one (1) year effective June 30, 1993. Every authorization under this General Permit will expire on the same date.

All heavy manufacturing facilities that the Director believes are eligible for coverage under this permit will be authorized to discharge under the terms and conditions of this permit after a complete Registration Statement is

submitted and the Director sends a copy of the General Permit to the owner/operator. If this General Permit is inappropriate, the owner/operator will be so notified and the requirement that an individual permit or alternate general permit is needed will remain in effect. Any facility may request an individual permit by submitting an appropriate application.

Not all pages of Part I of the General Permit will apply to every permittee. The determination of which pages apply will be based on the classification of the industrial facility and/or the industrial activity occurring at the facility. The copy of the General Permit transmitted to the owner/operator would contain only those Part I pages applicable to his facility. All permits will contain the pages of Parts II, III and IV.

VA.R. Doc. No. R93-623; Filed June 29, 1993, 12:05 p.m.

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Title of Regulation: **VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 680-14-17 establishes a general VPDES permit for storm water discharges associated with industrial activity from light manufacturing facilities. The Clean Water Act requires certain facilities with point source discharges of storm water associated with industrial activity to submit a permit application under the National Pollutant Discharge Elimination System (NPDES) permits program. Virginia operates this program as the VPDES permits program. This proposed regulation will allow "light manufacturing" facilities to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these facilities. This proposed regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This proposed regulation will: (1) define facilities classified as "light manufacturing" which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (3) establish standard language for control of storm water discharges associated with indisutrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

In Virginia there are an estimated 3650 facilities classified as "light manufacturing" that may be required to submit a permit application under the federal storm water regulations. Facilities covered by this regulation were required to apply for a storm water permit by October 1, 1992, using one of three application options: (1) individual application; (2) group application; and (3) general permit "Notice of Intent."

Since Virginia did not have storm water general permits available prior to EPA's October 1, 1992 deadline, an emergency regulation (VR 680-14-15) was passed by the State Water Control Board on September 22, 1992. The emergency regulation allowed industrial facilities to file a Registration Statement indicating their intent to be covered by a storm water general permit that would subsequently be developed.

The Department staff has developed a general permit for storm water discharges associated with industrial activity from light manufacturing facilities. This general permit is based upon EPA's storm water general permit that was published in the Federal Register on September 9, 1992. In developing this general permit, EPA's general permit was modified to make it specific to Virginia.

The general permit requires the development and implementation of a pollution prevention plan by the permittee. The purpose of the pollution prevention plan is to identify potential sources of storm water pollution and to describe and ensure the implementation of best management practices to reduce the pollutants in storm water discharges. The general permit requires inspections to be conducted to identify sources of pollutants and to evaluate whether the pollution prevention measures are adequate and are being effectively implemented.

Effluent limitations and monitoring requirements in the general permit are established for selected industrial activities based upon the industries' potential for contributing pollutants to storm water discharges. These requirements are intended to ensure compliance with the requirements of the permit and to protect water quality.

As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. A permit fee will be required from the applicant for the issuance of the general permit. The proposed regulation will authorize storm water discharges associated with industrial activity from these facilities in the most effective, flexible, and economically practical manner to assure the improvement of water

quality in State waters.

Nature of the Emergency:

Due to unforeseen complications associated with the 1993 revisions to the Virginia Administrative Process Act, the draft storm water general permit regulation which was scheduled to be adopted by the State Water Control Board in August will have to be taken through the rulemaking process again starting on July 1. This will make it impossible to have a storm water general permit in place prior to the expiration of the emergency regulation (VR 680-15-14) on September 22. If the storm water general permit is not adopted as an emergency regulation, the facilities which have applied under the old emergency regulation must reapply for an individual VPDES storm water permit for their storm water discharges. This will involve sampling a "representative" storm event, the completion and filing of an application form, and the payment of the "individual" permit application fee. It is unlikely that the impacted facilities will be able to sample a representative storm event, and complete and submit the new application form before September 22. Consequently, at that time they will be subject to penalties for unauthorized discharges of storm water.

Necessity for Action:

The Department proposes to adopt a general VPDES permit for storm water discharges associated with industrial activity from light manufacturing facilities. By adopting this general permit as an emergency regulation, the Department can begin covering these storm water dischargers immediately. The general permit emergency regulation would expire one year from its effective date. By that time the Department will have taken the regulation through the administrative process for permanent adoption.

The Department recognizes the need for this general permit to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulation would also reduce the manpower needed by the Department for permitting these discharges. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Summary:

This regulation will establish a general VPDES permit for storm water discharges associated with industrial activity from light manufacturing facilities. The regulation will allow industrial facilities to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these facilities. The regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The Department will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton, Director
Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia

Department of Environmental Quality or his designee.

"Industrial activity" includes the following categories of facilities, which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA (42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10 and which are further defined as light manufacturing facilities.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 water priority chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) that meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or

Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "Industrial Activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "Industrial Activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 11 of the definition of "industrial activity," light manufacturing facilities, as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from light manufacturing facilities provided that the discharge is through a point source to surface waters of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.15:6, 62.1-44.16, 62.1-44.17, 62.1-44.20, and 62,1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Those registration statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on June 30, 1993. This general permit will expire one year from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, files the permit fee required by § 9, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharges and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration Statement and Notice of Termination.

A. The owner of a light manufacturing facility with storm water discharges associated with industrial activity who is proposing to be covered by this general permit shall file a complete VPDES general permit registration statement in accordance with this regulation. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES

1. Facility Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

2. Facility Location

Name: . . . . . .

Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

3. Status . . . . . (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification Code (SIC) Secondary SIC Codes: . . . . . .

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? Yes . . . No . . . If yes, operator name of the MS4 . . . . . .

6. Receiving Water Body (e.g. Clear Creek or unnamed Tributary to Clear Creek) . . . . . .

7. Other Existing VPDES Permit Numbers . . . . . .

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals? . . . . . .

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code Section 62.1-44.15:3.

10. Certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is

to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

.....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

Basin . . . . . Stream Class . . . . . Section . . . . . .

Special Standards . . . . . .

. . . . .

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES

1. VPDES Storm Water General Permit Number . . . . . .

2. Check here if you are no longer the owner/operator of the facility . . . .

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated . . . .

4. Facility Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

5. Facility Location

Name: . . . . . .

Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

6. Certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the state is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act."

Print Name: . . . . . .

Title: . . . . . .

Signature: . . . . . Date: . . . . . .

.....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: . . . . . Date: . . . . . .

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the Permit Regulation (VR 680-14-01).

General Permit No.: VAR17xxxx

Effective Date: June 30, 1993

Expiration Date: June 30, 1994

GENERAL PERMIT FOR STORM WATER DISCHARGES
ASSOCIATED WITH INDUSTRIAL ACTIVITY
FROM LIGHT MANUFACTURING FACILITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
AND
THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water

Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners/operators of light manufacturing facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation or policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, Part III - Storm Water Pollution Prevention Plan and Part IV - Management Requirements, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at **facilities that are subject to Section 313 of EPCRA** for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/Composite**
Total Phosphorus (mg/l)	NA	NL	1/6M	Grab/Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Section 313 Water Priority Chemicals***	NA	NL	1/6M	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas at **meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
BOD5 (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Phosphorus (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Fecal Coliform (N/CML)	NA	NL	1/YR	Grab**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.
** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity that comes in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation at facilities classified as **Standard Industrial Classification (SIC) 30 (Rubber and Miscellaneous Plastics Products)**.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/Composite**

NL= No Limitation, monitoring required
NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.
** The grab sample should be taken during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes.
*** Any pollutant limited in an effluent guideline to which the facility is subject.

PART II.
MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992)).

3. The sampling and analysis program to demonstrate compliance with the permit shall, at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information a may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department's Regional Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The Department's Regional Office may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department's Regional Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the Department's Regional Office cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration Statement and Notice of Termination.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or had executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 a, b, or c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b, or c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain with the other records and information resulting from the monitoring activities as required under subsection C of Part II, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during this permit term. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of Part II (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR Part 122 (1992) that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test procedures. The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species in accordance with Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (EPA/600/4-90-027 Rev. 9/91, Section 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally salin waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by January 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after June 30, 1993, 180 days after submitting a Registration Statement to be covered by this permit but in no case later than June 30, 1994. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe the procedure of any test conducted for the presence of nonstorm water discharges, the results of such test or other relevant observations, potential sources of nonstorm water discharges to the storm sewer, and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan by June 30, 1994.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to subdivisions D 7 (EPCRA Section 313) and D 8 (salt storage) of this part shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but not later than June 30, 1994.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements), and

be retained on-site at the facility which generates the storm water discharge in accordance with subsection E of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, or authorized representative, or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director (or as otherwise provided by the director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 (description of potential pollutant sources) of this part of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c (spills and leaks) of this part of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of th direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and

significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations, outdoor storage activities, outdoor manufacturing or processing activities, significant dust or particulate generating processes, and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Nonstorm water discharges.

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of

potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the director in accordance with subsection O of Part II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in subdivision M 2 of Part II (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 (description of potential pollutant sources) of this part of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once during the permit term. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 (description of potential pollutant sources) of this part of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 (measures and controls) of this part of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm water pollution

prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the Clean Water Act or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to-Know (EPCRA) Section 313 requirements In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivisions D 7 b (1), (2), (3) or (4) of this part), from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to surface waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as "Section 313 water priority chemicals" and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Suc.

certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a surface water of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than June 30, 1994. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of termination.

1. The owner of the facility shall submit a Notice of Termination to the director, that is signed in accordance with subsection G of Part II, where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a new registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

B. Treatment works operation and quality control.

1. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) and/or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) and/or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited.

G. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

H. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

I. Severability.

The provisions of this permit are severable.

J. Duty to reregister.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

K. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit. For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The director does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

M. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the Department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Law. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et seq. and 62.1-44.21 of the Code of Virginia). Notwithstanding the foregoing, any supplemental information that the Department may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant

permittee.

2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

N. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act; or

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

O. Permit termination.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation (VR 680-14-01) and in accordance with subsections N, O and Q of this part of this permit).

Q. When an individual permit may be required.

The director may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharge(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a general permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for hearing.

R. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters: sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

§ 9. Permit Fee.

Notwithstanding the requirements of VR 680-01-01, for the purposes of this emergency regulation only, the fee for issuance of general permits under this emergency regulation shall be $40.

FACT SHEET

ISSUANCE OF A GENERAL VPDES PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES

AUTHORIZATION TO DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW.

The Virginia State Water Control Board has under consideration the issuance of a VPDES general permit for storm water discharges associated with industrial activity from light manufacturing facilities.

Permit Number: VAR17xxxx

Name of Permittee: Any owner/operator of a light manufacturing facility with storm water discharges associated with industrial activity in the Commonwealth of Virginia, agreeing to be regulated under the terms of this General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except designated public water supplies or water where Board Regulations or Policies prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue the General Permit subject to certain conditions and has prepared a draft permit. It has been etermined that this category is appropriately controlled under a General Permit. The category involves light manufacturing facilities defined as facilities classified as Standard Industrial Classification (SIC) 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-4225 (Office of Management and Budget SIC Manual, 1987).

The draft General Permit requires that all facilities which generate a storm water discharge associated with storm water runoff to surface waters of the State meet standardized monitoring requirements and requirements to develop a site-specific storm water pollution prevention plan.

Proposed Monitoring Requirements

An annual comprehensive site compliance evaluation is required of all facilities with several specific types of facilities having monitoring requirements. The effluent limitations and monitoring requirements are set according to the type of industrial facility, type of industrial activity occurring or the materials present at the facility. These requirements are consistent with EPA's general permit for storm water discharges associated with industrial activity. This permit also provides an exemption from monitoring requirements for outfalls that do not have any materials, material handling equipment, industrial machinery or industrial operation exposed to storm water located within the drainage area of the outfall. An annual certification of this exemption is required. Results of all monitoring are to be retained on site for a period of 3 years from the date of the analysis or for one year after the permit terminates, whichever is later.

Facilities subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes in contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled must monitor semiannually for Oil and Grease, BOD5, Chemical Oxygen Demand, Total Suspended Solids, Total Kjeldahl Nitrogen, Total Phosphorus, pH, acute whole effluent toxicity and any Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of EPCRA and where there is the potential for discharge of these chemicals to mix with storm water. These facilities that manufacture, import or process, or have other use of large amounts of toxic chemicals can potentially be a significant source of toxic pollutants to storm water.

The acute whole effluent toxicity testing was included as an efficient method of assessing the toxicity potential or complex mixtures of pollutants in storm water, to assist in identifying pollutant sources, and as a measure of the effectiveness of a facility's pollution prevention plan and is generally not intended to directly evaluate toxic effects on organisms in receiving waters. A 24-hour test using 100 percent storm water effluent serves as an initial screen for evaluating whether a discharge potentially contributes to water quality impairment. This permit allows flexibility for the selection of appropriate invertebrate and fish species. The acute whole effluent toxicity testing requirements are consistent with EPA's general permit for storm water discharges associated with industrial activity.

An alternative to whole effluent toxicity testing is given in the permit. These dischargers can either analyze for whole effluent toxicity or for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility. These options allow a facility to monitor for whole effluent toxicity which focuses on the use of a single parameter with the ability to identify the potentially toxic character of mixtures of chemicals in water or t analyze the storm water for specific chemicals that the

discharger know or has reason to believe are present at the facility site. Permittees may consider what would be most appropriate for their facility when choosing a sampling option.

Meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation must conduct annual monitoring for BOD5, Oil and Grease, Total Suspended Solids, Total Kjeldahl Nitrogen, Total Phosphorus, pH and fecal coliform. Animal waste products can be a significant source of pollutants in storm water.

Facilities classified as Standard Industrial Classification 30, Rubber and Miscellaneous Plastics Products where storm water discharges associated with industrial activity come in contact with storage piles for solid chemicals used as raw materials that are exposed to precipitation must conduct annual monitoring for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, pH and any pollutant limited in an effluent guideline to which the facility is subject. These requirements are based on the consideration of specific activities having a significant potential for contributing pollutants to storm water.

Minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity were developed by EPA. EPA established that at least an annual inspection be conducted at the site. This provides sufficient flexibility to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Several factors were taken into consideration when evaluating this issue. The potential difficulties of collection of storm water samples which include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country and variability in flow rates. The types and concentrations of pollutants in the storm water discharges depend on the nature of the industrial activities occurring at the site, the nature of the precipitation event, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in results collected. Requiring each facility to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by the state. A significant amount of permitting resources dedicated to reviewing and filing these reports would be necessary.

In establishing the minimum monitoring and reporting requirements for storm water discharges from light manufacturing facilities, it was determined that requiring a comprehensive site evaluation once during the permit term for all facilities would allow for the identification of areas contributing to a storm water discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Additional monitoring requirements for selected industrial activities which, due to the nature of the industrial activity or materials stored or used on site, have significant potential for contributing pollutants to storm water are necessary to ensure compliance with the requirements of the permit and to protect water quality. This information obtained from the monitoring requirements will assist and supplement efforts to identify pollution sources and evluate the effectiveness of the pollution prevention requirements.

This general permit requires the development of a storm water pollution prevention plan with one component of that plan being an annual comprehensive site compliance evaluation. Where permits require the implementation of pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide an acceptable indication of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on many facilities. The permittee is also required to maintain records summarizing the results of the inpsection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the minimum requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to ensure the effective implementation of pollution prevention plans.

Proposed Requirements for the Development of a Storm Water Pollution Plan

The permittee is required to develop a storm water pollution prevention plan. The plan is intended to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges and describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges.

The Clean Water Act requires that all NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements. This permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans and thus, is consistent with the requirements of the CWA. Currently, there is not sufficient data to develop appropriate numeric effluent limitations for storm water discharges from all the varied sources of storm water

discharges associated with industrial activity covered by this permit. The facilities covered by this permit have varied potential for having different pollutants in their storm water discharges.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. The varying sizes and complexities of the facilties should be reflected in the storm water pollution prevention plan. This adequately addresses the variable storm water management/pollution prevention opportunities available at a facility. These plans are required to achieve BAT/BCT requirements in lieu of numeric limitations. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in storm water discharges and provide for flexibility for developing tailored plans and strategies. This permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in storm water discharges and are necessary to reflect BAT/BCT. These components include the formation of a pollution prevention team, a description of pollutant sources, identification and implementation of measures and controls and a comprehensive site compliance evaluation.

The permittee is to consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts. The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and no-water quality environmental impacts.

Other Regulatory Considerations

The General Permit will have a fixed term of one (1) year effective June 30, 1993. Every authorization under this General Permit will expire on the same date.

All light manufacturing facilities that the Director believes are eligible for coverage under this permit will be authorized to discharge under the terms and conditions of this permit after a complete Registration Statement is submitted. If it is determined to be appropriate, the Director will send a copy of the General Permit to the owner/operator. If this General Permit is inappropriate, the owner/operator will be so notified and the requirement that an individual permit is needed will remain in effect. Any facility may request an individual permit by submitting an appropriate application.

Not all pages of Part I of the General Permit will apply to every permittee. The determination of which pages apply will be based on the classification of the industrial facility and/or the industrial activity occurring at the facility. The copy of the General Permit transmitted to this owner/operator would contain only those Part I pages applicable to his facility. All permits will contain the pages of Parts II, III and IV.

VA.R. Doc. No. R93-624; Filed June 29, 1993, 12:10 p.m.

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Title of Regulation: **VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges from Transportation Facilities; Landfills, Land Application Sites and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 680-14-18 establishes a general VPDES permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. The Clean Water Act requires certain facilities with point source discharges of storm water associated with industrial activity to submit a permit application under the National Pollutant Discharge Elimination System (NPDES) permits program. Virginia operates this program as the VPDES permits program. This proposed regulation will allow industrial facilities to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these facilities. This proposed regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This proposed regulation will: (1) define the facilities classified as "transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities" which may be authorized by this general permit; (2) establish procedures to submit a Registration Statement as intention to be covered by

the general permit; (3) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (4) set minimum monitoring and reporting requirements.

In Virginia there are an estimated 1500 facilities classified as "transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities" that may be required to submit a permit application under the federal storm water regulations. Facilities covered by this regulation were required to apply for a storm water permit by October 1, 1992, using one of three application options: (1) individual application; (2) group application; and (3) general permit "Notice of Intent."

Since Virginia did not have storm water general permits available prior to EPA's October 1, 1992 deadline, an emergency regulation (VR 680-14-15) was passed by the State Water Control Board on September 22, 1992. The emergency regulation allowed industrial facilities to file a Registration Statement indicating their intent to be covered by a storm water general permit that would subsequently be developed.

The Department staff has developed a general permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. This general permit is based upon EPA's storm water general permit that was published in the Federal Register on September 9, 1992. In developing this general permit, EPA's general permit was modified to make it specific to Virginia.

The general permit requires the development and implementation of a pollution prevention plan by the permittee. The purpose of the pollution prevention plan is to identify potential sources of storm water pollution and to describe and ensure the implementation of best management practices to reduce the pollutants in storm water discharges. The general permit requires inspections to be conducted to identify sources of pollutants and to evaluate whether the pollution prevention measures are adequate and are being effectively implemented.

Effluent limitations and monitoring requirements in the general permit are established for selected industrial activities based upon the industries' potential for contributing pollutants to storm water discharges. These requirements are intended to ensure compliance with the requirements of the permit and to protect water quality.

As required by this regulation, all covered facilities would submit a complete Registration Statement, develop a storm water pollution prevention plan, and perform minimum monitoring and reporting. A permit fee will be required from the applicant for the issuance of the general permit. The proposed regulation will authorize storm water discharges associated with industrial activity from these facilities in the most effective, flexible, and economically practical manner to assure the improvement of water quality in State waters.

Nature of the Emergency:

Due to unforeseen complications associated with the 1993 revisions to the Virginia Administrative Process Act, the draft storm water general permit regulation which was scheduled to be adopted by the State Water Control Board in August will have to be taken through the rulemaking process again starting on July 1. This will make it impossible to have a storm water general permit in place prior to the expiration of the emergency regulation (VR 680-15-14) on September 22. If the storm water general permit is not adopted as an emergency regulation, the facilities which have applied under the old emergency regulation must reapply for an individual VPDES storm water permit for their storm water discharges. This will involve sampling a "representative" storm event, the completion and filing of an application form, and the payment of the "individual" permit application fee. It is unlikely that the impacted facilities will be able to sample a representative storm event, and complete and submit the new application form before September 22. Consequently, at that time they will be subject to penalties for unauthorized discharges of storm water.

Necessity for Action:

The Department proposes to adopt a general VPDES permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. By adopting this general permit as an emergency regulation, the Department can begin covering these storm water dischargers immediately. The general permit emergency regulation would expire one year from its effective date. By that time the Department will have taken the regulation through the administrative process for permanent adoption.

The Department recognizes the need for this general permit to ease the burden on the regulated community and to facilitate the issuance of storm water permits. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. Adoption of the proposed regulation would also reduce the manpower needed by the Department for permitting these discharges. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Summary:

This regulation will establish a general VPDES permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities. The regulation will allow industrial facilities to submit a Registration Statement as an application for coverage under a VPDES general permit and authorize the discharge of storm water associated with industrial activity from these facilities. The regulation will replace the emergency regulation VR 680-14-15, "VPDES General Permit Registration Statement for Storm Water Discharges Associated With Industrial Activity" that became effective September 22, 1992.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The Department will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton, Director
Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Transportation Facilities; Landfills, Land Application Sites, and Open Dumps; Materials Recycling Facilities; and Steam Electric Power Generating Facilities.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulations) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Industrial activity" includes the following categories of facilities, which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under category (11) of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminate by contact with, or that has come into contact with, any overburden, raw materia, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, bonification, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA

(42 USC 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition) including those that are subject to regulation under Subtitle D of RCRA (42 USC 6901 et seq.);

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operation, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under subdivisions 1 through 7 or 9 through 11 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403 (1992). Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act. (33 USC 1251 et seq.);

10. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

11. Facilities under SIC 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987), and which are not otherwise included within subdivisions 2 through 10.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Section 313 Water Priority Chemicals" means a chemical or chemical categories which: (i) are listed at 40 CFR Part 372.65 (1992) pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (ii) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (iii) meet at least one of the following criteria: (a) are listed in Appendix D of 40 CFR Part 122 (1992) on either Table II (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which EPA has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in subdivisions 1 through 10 of the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in subdivision 11 of the "industrial activity" definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities,

raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs storm water discharges associated with subdivision 4 landfills, land application sites and open dumps; subdivision 6 materials recycling facilities; subdivision 7 steam electric power generating facilities; and subdivision 8 transportation facilities of the definition of "industrial activity" as previously defined. This general permit covers only discharges comprised solely of storm water, or as otherwise defined in the permit, from these facilities provided that the discharge is through a point source to surface water of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (6), (7), (9), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.15:6, 62.1-44.16, 62.1-44.17, 62.1-44.20, and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This VPDES general permit regulation supersedes the emergency regulation (VR 680-14-15) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Registration Statement for Storm Water Discharges Associated with Industrial Activity which became effective September 22, 1992. Those registration statements received under the emergency regulation (VR 680-14-15) are hereby recognized as valid and acceptable under this regulation. This general permit will become effective on June 30, 1993. This general permit will expire one year from the effective date. Any covered owner/operator is authorized to discharge under this general permit upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner/operator governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner/operator files and receives acceptance, by the director, of the Registration Statement of § 7, complies with the requirements of § 8, files the permit fee required by § 9, and provided that:

1. Individual permit. The owner/operator shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation. Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges or that such discharges are not subject to an existing effluent limitation guideline addressing storm water.

2. Prohibited discharge locations. The owner/operator shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. Local government notification. The owner/operator shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Endangered or threatened species. The director may deny coverage under this general permit to any owner/operator whose storm water discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Other sources of storm water discharges. This permit may authorize storm water discharges associated with industrial activity that are mixed with other storm water discharges requiring a permit provided that the permittee obtains coverage under this VPDES general permit for the industrial activity discharges and a VPDES general or individual permit for the other storm water discharges. The permittee shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

The storm water discharges authorized by this permit may be combined with other sources of storm water which are not required to be covered under a VPDES permit, so long as the discharger is in compliance with this permit.

Receipt of this general permit does not relieve any owner/operator of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration statement and notice of termination.

A. The owner shall file a complete VPDES general

permit registration statement for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites, and open dumps; materials recycling facilities; and steam electric power generating facilities. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the commencement of the industrial activity at the facility. Any owner of an existing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and submit a complete registration statement at least 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing facility, not currently covered by a VPDES permit, who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES

1. Facility Owner

Name: .....

Mailing Address: .....

City:..... State:..... Zip Code:.....

Phone:.....

2. Facility Location

Name: .....

Address:.....

City:..... State:..... Zip Code:.....

3. Status: (Federal, State, Public, or Private)

4. Primary Standard Industrial Classification Code (SIC) Secondary SIC Codes:

5. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)? Yes..... No..... If yes, operator name of the MS4

6. Receiving Water Body (e.g. Clear Creek or unnamed Tributary to Clear Creek)

7. Other Existing VPDES Permit Numbers

8. Is this facility subject to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any Section 313 water priority chemicals?

9. The owner/operator must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by Virginia Code § 62.1-44.15:3.

10. Certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Print Name: .....

Title: .....

Signature: .....

Date: .....

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: .....

Date: .....

Basin..... Stream Class..... Section.....

Special Standards .....

B. This permit may be terminated by the owner/operator by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all storm water discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of storm water discharges associated with industrial activity at a facility changes or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT NOTICE OF

TERMINATION FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES

1. VPDES Storm Water General Permit Number .....

2. Check here if you are no longer the owner/operator of the facility .....

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated .....

4. Facility Owner

Name: .....

Mailing Address: .....

City:..... State:..... Zip Code:.....

Phone: .....

5. Facility Location

Name: .....

Address: .....

City:..... State:..... Zip Code:.....

6. Certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated or that I am no longer the owner of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity in accordance with the general permit, and that discharging pollutants in storm water associated with industrial activity to surface waters of the State is unlawful under the Clean Water Act where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner/operator from liability for any violations of this permit under the Clean Water Act."

Print Name: .....

Title: .....

Signature: .....

Date: .....

§ 8. General permit.

Any owner/operator whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the Permit Regulation (VR 680-14-01).

General Permit No.: VAR18xxxx

Effective Date: June 30, 1993.

Expiration Date: June 30, 1994.

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW.

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners/operators of transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities with storm water discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters where board regulation or policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, Part III - Storm Water Pollution Prevention Plan and Part IV - Management Requirements, as set forth herein.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at facilities that are subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes into contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a

truck or rail car loading or unloading area where a Section 313 water priority chemical is handled.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NO	1/6M	Estimate*
Oil and Grease (mg/l)	NO	NL	1/6M	Grab**
BOD5 (mg/l)	NA	NL	1/6M	Grab/ Composite**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Suspended Solids (mg/l	NA	NL	1/6M	Grab/ Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Phosphorus (mg/l)	NA	NO	1/6M	Grab/ Composite**
pH (SU)	NL	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**
Section 313 Water Priority Chemicals***	NA	NL	1/6M	Grab/ Composite**

NL=No Limitation, monitoring required

NA=Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Estimate of the total volume of the discharge during the storm event.

** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

*** Any Section 313 water priority chemical for which the facility is subject to reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and where there is the potential for these chemicals to mix with storm water discharges.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity at any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from construction sites).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Organic Carbon (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Dissolved Solids (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Kjeldahl Nitrogen (mg/l)	NA	NL	1/6M	Grab/ Composite**
Magnesium (dissolved) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Magnesium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Arsenic (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Barium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/

				Composite**
Cadmium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Chromium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Dissolved Hexavalent Chromium (ug/l)	NA	NL	1/6M	Grab/ Composite**
Cyanide (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Mercury (total) (ug/l)	NA	NL	1/6M	Grab/ Composite**
Selenium (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite**
pH (SU)	NL	NL	1/6M	Grab**
Fecal Coliform (N/CML)	NA	NL	1/6M	Grab**
Acute Whole Effluent Toxicity	NA	NL	1/6M	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time- weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.*

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from areas used for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation (including material handling activities) at facilities that reclaim lead acid batteries.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/6M	Estimate*
Oil and Grease (mg/l)	NA	NL	1/6M	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/6M	Grab/ Composite**
Total Suspended Solids (mg/l)	NA	NL	1/6M	Grab/ Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite
Lead (total recoverable) (ug/l)	NA	NL	1/6M	Grab/ Composite
pH (SU)	NL	NL	1/6M	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with*

a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) at airports with over 50,000 flight operations per year. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/ Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/ Composite**
BOD5 (mg/l)	NA	NL	1/YR	Grab/ Composite**
pH (SU)	NL	NL	1/YR	Grab**
Deicing Materials***	NA	NL	1/YR	Grab/ Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.*

**** Monitoring shall be for the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.).*

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423).

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/ Composite**
Copper (total recoverable) (ug/l)	NA	NL	1/YR	Grab/ Composite**
Nickel (total recoverable) (ug/l)	NA	NL	1/YR	Grab/ Composite
Zinc (total recoverable) (ug/l)	NA	NL	1/YR	Grab/ Composite
pH (SU)	NL	NL	1/YR	Grab**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours

from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.*

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) that are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) that are exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in dreas exposed to storm water.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/ Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/ Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/ Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow- weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.*

**** Any pollutant limited in an effluent guideline to which the facility is subject.*

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from oil handling sites at oil fired steam electric power generating facilities.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (MG)	NA	NL	1/YR	Estimate*
Oil and Grease (mg/l)	NA	NL	1/YR	Grab**
Chemical Oxygen Demand (mg/l)	NA	NL	1/YR	Grab/ Composite**
Total Suspended Solids (mg/l)	NA	NL	1/YR	Grab/

				Composite**
pH (SU)	NL	NL	1/YR	Grab**
Effluent Guideline Pollutants***	NA	NL	1/YR	Grab/ Composite**

NL= No Limitation, monitoring required

NA= Not Applicable

2. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

** Estimate of the total volume of the discharge during the storm event.*

*** The grab sample should be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of the discharge. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.*

**** Any pollutant limited in an effluent guideline to which the facility is subject.*

PART II.
MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 CFR Part 136 (1992)).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements, in accordance with approved EPA and state protocols.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used;

6. The results of such analyses and measurements;

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including the results of the analyses and all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, and records of all data used to complete the Registration Statement to be covered by this permit shall be made a part of the pollution prevention plan and shall retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the

monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the Permit Regulation.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department's Regional Office, as quickly as possible upon discovery, at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The Department's Regional Office may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

2. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in subdivisions 1 a through 1 c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided to the Department's Regional Office within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses; (ii) upsets; (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities; (iv) breakdown of processing or accessory equipment; (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities; or (vi) flooding or other acts of nature.

If the Department's Regional Office cannot be reached, a 24-hour telephone service is maintained in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, certification, or notice of termination required by this permit shall be signed as follows:

1. Registration statement/notice of termination.

a. For a corporation, by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or had executive officer having responsibility for the overall operation of a principal geographic unit of the agency).

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivisions 1 a, 1 b, or 1 c of this subsection; or

b. A duly authorized representative of that person.

A person is a duly authorized representative only if:

(1) The authorization is make in writing by a person described in subdivision 1 a, 1 b, or 1 c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulation facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the director prior to or together with any separate information, registration statement or notice of termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Sampling waiver.

When a discharger is unable to collect storm water samples due to adverse climatic conditions, the discharger must retain on site with the other records and information resulting from monitoring activities as required under subsection C of this part, a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples includes weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during this permit term. A similar report is required if collection of the grab sample during the first 30 minutes was impracticable.

I. Representative discharge.

When a facility has two or more outfalls comprised solely of storm water that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40%), medium (40% to 65%) or high (above 65%) shall be provided in the pollution prevention plan.

J. Alternative certification.

A discharger is not subject to the monitoring requirements of Part I of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with subsection G of this part (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification shall be made a part of the storm water pollution prevention plan.

K. Alternative to WET parameter.

A discharger that is subject to the monitoring requirements of Part I may, in lieu of monitoring for acute whole effluent toxicity, monitor at the same frequency as the acute whole effluent toxicity requirements in Part I of this permit for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility site. Such determinations are to be based on reasonable best efforts to identify significant quantities of materials or chemicals present at the facility. Dischargers must also monitor for any additional parameter identified in Part I.

L. Toxicity testing.

Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the issuance of this permit or within 90 days after the commencement of a new discharge.

1. Test procedures. The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate

invertebrate and an appropriate fish (vertebrate) test species in accordance with Methods for Measuring the Acute Toxicity of Effluent and Receiving Waters to Freshwater and Marine Organisms, (EPA/600/4-90-027 Rev. 9/91, § 6.1). Freshwater species must be used for discharges to freshwater water bodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

All test organisms, procedures and quality assurance criteria used shall be in accordance with the above referenced document. EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

Tests shall be conducted semiannually (twice per year) on a grab sample of the discharge. Tests shall be conducted using 100% effluent (no dilution) and a control consisting of synthetic dilution water. The permittee shall include the results of these tests with the pollution prevention plan.

2. If acute whole effluent toxicity (statistically significant difference between the 100% dilution and the control) is detected in storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Prohibition on nonstorm water discharges.

All discharges covered by this permit shall be composed entirely of storm water except as provided in subdivisions 1 and 2 of this subsection.

1. Except as provided in subdivision 2 of this subsection, discharges of material other than storm water must be in compliance with a VPDES permit (other than this permit) issued for the discharge.

2. The following nonstorm water discharges may be authorized by this permit provided the nonstorm water component of the discharge is in compliance with subdivision D 3 g (1) of Part III: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

N. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR part 117 (1992) and 40 CFR part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR 117 (1992) or 40 CFR 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

O. Failure to certify.

Any facility that is unable to provide the certification required under subdivision D 3 g (1) of Part III must notify the director by January 1, 1994, or, for facilities which begin to discharge storm water associated with industrial activity after June 30, 1993, 180 days after submitting a Registration Statement to be covered by this permit but in no case later than June 30, 1994. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: (i) the procedure of any test conducted for the presence of nonstorm water discharges; (ii) the results of such test or other relevant observations; (iii) potential sources of nonstorm water discharges to the storm sewer; and (iv) why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to waters of the state which are not authorized by a VPDES permit are unlawful and must be terminated or dischargers must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm

water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan by June 30, 1994.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Portions of the plan addressing additional requirements for storm water discharges from facilities subject to subdivisions D 7 (EPCRA Section 313) and D 8 of this part (salt storage) shall provide for compliance with the terms of the requirements identified in subdivisions D 7 and D 8 of this part as expeditiously as practicable, but not later than June 30, 1994.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part II (signatory requirements) and be retained on-site at the facility which generates the storm water discharge in accordance with subsection E of Part II (retention of records) of this permit.

2. The permittee shall make plans available upon request to the director, authorized representative, or, in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. The director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director, (or as otherwise provided by the director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the director a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c of this part (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and

storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of the issuance of this permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: (i) loading and unloading operations; (ii) outdoor storage activities; (iii) outdoor manufacturing or processing activities; (iv) significant dust or particulate generating processes; and (v) on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g. biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g. cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water

pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Nonstorm water discharges.

(1) The plan shall include a certification that the discharge has been tested or evaluated for the presence of nonstorm water discharges. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test and/or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with subsection G of Part II of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of nonstorm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the director in accordance with Subsection O of Part II (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources (authorized nonstorm water discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

h. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

i. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 of this part (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once during the permit term. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 of this part (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 of this part (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the

inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4 b of this part of the permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part II. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part II (signatory requirements) of this permit and retained as required in subsection C of Part II.

5. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more.

a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees which discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more shall make plans available to the municipal operator of the system upon request.

6. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

7. Additional requirements for storm water discharges associated with industrial activity from facilities subject to Emergency Planning and Community Right-to-Know (EPCRA) Section 313 requirements. In addition to the requirements of subdivisions D 1 through D 4 of this part of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall describe and ensure the implementation of practices which are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under subdivision D 7 a of this part of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable state rules, regulations and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals.

(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind shall incorporate drainage or other control features which will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: (i) the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; (ii) a strong spill contingency and integrity testing plan; or other equivalent measures.

(4) Areas where Section 313 water priority chemicals are transferred, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part.

(a) Drainage from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas in accordance with subsection C of Part II.

(6) Facility site runoff other than from areas covered by subdivision D 7 b (1), (2), (3) or (4) of this part. Other areas of the facility (those not addressed in subdivision D 7 b (1), (2), (3) or (4)) of this part, from which runoff which may contain Section 313 water priority chemicals or where spills of Section 313 water priority chemicals could cause a discharge, shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures which could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered which may result in significant releases of Section 313 water priority chemicals to surface waters of the state, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the state shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313

water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering Certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan as soon as practicable after significant modification are made to the facility. By means of these certifications the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

8. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and which generate a storm water discharge associated with industrial activity which is discharged to a surface water of the state shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than June 30, 1994. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the state.

E. Notice of Termination.

1. The owner of the facility shall submit a Notice of Termination to the director, that is signed in accordance with subsection G of Part II, where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, where the owner of a facility with storm water discharges associated with industrial activity changes, or where all storm water discharges associated with industrial activity have been covered by an individual VPDES permit.

2. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a new registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at a facility. There shall not be commencement of treatment or management of pollutants activities until a permit is received. A separate VPDES permit may also be required of the construction activity.

2. All discharges or pollutant management activities authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 30 days prior to all expansions, production increases, or process modifications that will result in new or increased pollutants in the storm water discharges associated with industrial activity. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

B. Treatment works operation and quality control.

1. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters;

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions

of this permit; and

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and/or limitation requirements are not violated.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) and/or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) and/or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability. The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass (bypass means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited.

G. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or other appropriate requirements of the state Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

H. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

I. Severability.

The provisions of this permit are severable.

J. Duty to reregister.

If the permittee wishes to continue to discharge under this general permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 120 days before the expiration date of this permit.

K. Right of entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials to:

1. Enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) are located or in which any records are required to be kept under the terms and conditions of this permit;

2. Have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. Inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. Sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. Inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

L. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the director 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the director includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The director does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

M. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the Department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Law. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et seq. and 62.1-44.21 of the Code of Virginia). Notwithstanding the foregoing, any supplemental information that the Department may obtain from such filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee.

2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

N. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act; or

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee;

O. Permit termination.

The owner shall submit a Notice of Termination when all storm water discharges associated with industrial activity that are authorized by this permit are eliminated or ownership of the facility changes.

P. Permit modification, revocation, reissuance, and termination.

This general permit may be modified, revoked, reissued, or terminated pursuant to the VPDES Permit Regulation (VR 680-14-01:1) and in accordance with other sections of this permit subsections N, O and Q of this part.

Q. When an individual permit may be required.

The director may require any owner authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharge(s) is a significant contributor of pollution;

2. Conditions at the operating facility change altering the constituents and/or characteristics of the discharge such that the discharge no longer qualifies for a General Permit;

3. The discharge violates the terms or conditions of this permit;

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit; and

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual owner for any of the reasons set forth above after appropriate notice and an opportunity for hearing.

R. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying

for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the General Permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Nothing in this permit shall be construed to relieve the permittee from civil liability and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants. Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

§ 9. Permit Fee.

Notwithstanding the requirements of VR 680-01-01, for the purposes of this emergency regulation only, the fee for issuance of general permits under this emergency regulation shall be $40.

FACT SHEET

ISSUANCE OF A GENERAL VPDES PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES

AUTHORIZATION TO DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES, LANDFILLS, LAND APPLICATION SITES, OPEN DUMPS, MATERIALS RECYCLING FACILITIES AND STEAM ELECTRIC POWER GENERATING FACILITIES UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

The Virginia State Water Control Board has under consideration the issuance of a VPDES general permit for storm water discharges associated with industrial activity from transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities.

Permit Number: VAR18xxxx

Name of Permittee: Any owner/operator of a transportation facility; landfill, land application site or open dump; materials recycling facility; or steam electric power generating facility with storm water discharges associated with industrial activity in the Commonwealth of Virginia, agreeing to be regulated under the terms of this General Permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia, except designated public water supplies or water where Board Regulations or Policies prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the Board proposes to issue the General Permit subject to certain conditions and has prepared a draft permit. It has been determined that this category is appropriately controlled under a General Permit. The category involves transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities.

The draft General Permit requires that all facilities which generate a storm water discharge associated with industrial activity to surface waters of the State meet standardized monitoring requirements and requirements to develop a sitespecific storm water pollution prevention plan.

Proposed Monitoring Requirements

An annual comprehensive site compliance evaluation is required of all facilities with several specific types of facilities having monitoring requirements. The monitoring requirements are set according to the type of industrial facility, type of industrial activity occurring or the materials present at the facility. These requirements are consistent with EPA's general permit for storm water discharges associated with industrial activity. This permit also provides an exemption from monitoring requirements for outfalls that do not have any materials, material handling equipment, industrial machinery or industrial operation exposed to storm water located within the

drainage area of the outfall. An annual certification of this exemption is required and must be retained on site. Results of all monitoring are to be retained on site for a period of 3 years from the date of the analysis or for one year after the permit terminates, whichever is later.

The following select types of industrial facilities or industrial activities have semiannual monitoring requirements:

1. Facilities subject to Section 313 of EPCRA for chemicals which are classified as 'Section 313 water priority chemicals' where the storm water comes in contact with any equipment, tank, container or other vessel or area used for storage of a Section 313 water priority chemical, or located at a truck or rail car loading or unloading area where a Section 313 water priority chemical is handled. These facilities must monitor for Oil and Grease, BOD5, Chemical Oxygen Demand, Total Suspended Solids, Total Kjeldahl Nitrogen, Total Phosphorus, pH, acute whole effluent toxicity and any Section 313 water priority chemical for which the facility is subject to reporting requirements under Section 313 of EPCRA and where there is the potential for these chemicals to mix with storm water discharges. These facilities that manufacture, import or process, or have other use of large amounts of toxic chemicals can potentially be a significant source of toxic pollutants to storm water.

2. Facilities with storm water discharges associated with industrial activity from any active or inactive landfill, land application sites or open dump without a stabilized final cover that has received any industrial wastes (other than wastes from a construction site). These facilities are required to monitor for Oil and Grease, Chemical Oxygen Demand, Total Dissolved Solids, Total Organic Carbon, Total Kjeldahl Nitrogen, total recoverable magnesium, dissolved magnesium, total recoverable arsenic, total recoverable barium, total recoverable cadmium, total recoverable chromium, dissolved hexavalent chromium, total recoverable cyanide, total recoverable lead, total mercury, total recoverable selenium, total recoverable silver, pH, and acute whole effluent toxicity. These facilities receive a diverse range of industrial wastes and the waste receiving, handling, storage, process and actual waste disposal can be significant sources of pollutants;

3. Facilities that reclaim lead acid batteries must monitor at areas used for storage of lead acid batteries, reclamation products, or waste products and areas used for lead acid battery reclamation (including material handling activities). These facilities must monitor for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, total recoverable lead, total recoverable copper, and pH. These identified areas have significant potential for introducing pollutants into storm water discharges.

The acute whole effluent toxicity testing was included as an efficient method of assessing the toxicity potential of complex mixtures of pollutants in storm water, to assist in identifying pollutant sources, and as a measure of the effectiveness of a facility's pollution prevention plan and is generally not intended to directly evaluate toxic effects on organisms in receiving waters. A 24-hour test using 100 percent storm water effluent serves as an initial screen for evaluating whether a discharge potentially contributes to water quality impairment. This permit allows flexibility for the selection of appropriate invertebrate and fish species.

An alternative to whole effluent toxicity testing is given in the permit. These dischargers can either analyze for whole effluent toxicity or for pollutants identified in Tables II and III of Appendix D of 40 CFR 122 that the discharger knows or has reason to believe are present at the facility. These options allow a facility to monitor for whole effluent toxicity which focuses on the use of a single parameter with the ability to identify the potentially toxic character of mixtures of chemicals in water or to analyze the storm water for specific chemicals that the discharger know or has reason to believe are present at the facility site. Permittees may consider what would be most appropriate for their facility when choosing a sampling option.

The following select types of industrial facilities or industrial activities have annual monitoring requirements:

1. Airports with over 50,000 flight operations per year. Areas where aircraft or airport deicing operations occur (including runways, taxiways, ramps, and dedicated aircraft deicing stations) are required to be monitored for Oil and Grease, BOD5, Chemical Oxygen Demand, Total Suspended Solids, pH and the primary ingredient used in the deicing materials used at the site (e.g. ethylene glycol, urea, etc.). Deicing operations can be a significant potential source of pollutants in storm water discharges. A flight operation consists of a single takeoff or landing by an aircraft. The number of flight operations is one of the key factors for determining the amount of deicing activity at an airport.

2. Coal handling sites at coal fired steam electric power generating facilities (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR 423) must be monitored for Oil and Grease, Total Suspended Solids, pH, total recoverable copper, total recoverable nickel, and total recoverable zinc. These facilities use large amounts of coal and the coal handling activities at these facilities can be a significant source of pollutants in storm water discharges.

The following select types of industrial facilities or industrial activities must conduct annual monitoring for Oil and Grease, Chemical Oxygen Demand, Total Suspended Solids, pH and any pollutant limited in an effluen

guideline to which the facility is subject. These requirements are based on the consideration of specific activities having a significant potential for contributing pollutants to storm water.

1. Areas at automobile junkyards with any of the following: (A) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) that are exposed to storm water; (B) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) that are exposed to storm water; or (C) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water.

2. Oil handling sites at oil fired steam electric power generating facilities.

Minimum monitoring and reporting requirements specifically addressing storm water discharges associated with industrial activity were developed by EPA. EPA established that at least an annual inspection be conducted at the site. This provides sufficient flexibility to establish monitoring requirements that reflect the potential risk of the discharge and that are appropriately related to the nature of the permit conditions for a discharge. Several factors were taken into consideration when evaluating this issue. The potential difficulties of collection of storm water samples which include determining when a discharge will occur, safety considerations, the potential for a multiple discharge points at a single facility, the intermittent nature of the event, the limited number of events that occur in some parts of the country and variability in flow rates. The types and concentrations of pollutants in the storm water discharges depend on the nature of the industrial activities occurring at the site, the nature of the precipitation event, and the time period from the last storm. Variations in these parameters at a site may result in variation from event to event in results collected. Requiring each facility to submit monitoring data at least annually would result in a significant increase in the number of discharge monitoring reports received by the state. A significant amount of permitting resources dedicated to reviewing and filing these reports would be necessary.

In establishing the minimum monitoring and reporting requirements for storm water discharges from the facilities covered by this general permit, it was determined that requiring a comprehensive site evaluation once during the permit term for all facilities would allow for the identification of areas contributing to a storm water discharge associated with industrial activity and the evaluation of whether measures to reduce pollutant loadings identified in the storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Additional monitoring requirements for selected industrial activities which, due to the nature of the industrial activity or materials stored or used on site, have significant potential for contributing pollutants to storm water are necessary to ensure compliance with the requirements of the permit and to protect water quality. The information obtained from this monitoring will assist and supplement efforts to identify pollutant sources and evaluate the effectiveness of the pollution prevention requirements.

This general permit requires the development of a storm water pollution prevention plan with one component of that plan being an annual comprehensive site compliance evaluation. Where permits require the implementation of pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide an acceptable indication of whether a facility is complying with the permit. This will also reduce discharge sampling burdens on many facilities. The permittee is also required to maintain records summarizing the results of the inspection and a certification that the facility is in compliance with the permit. The requirement for adequate documentation of the inspection is particularly important given the minimum requirements to collect discharge monitoring data under the permit and the importance placed on using site inspections to ensure the effective implementation of pollution prevention plans.

Proposed Requirements for the Development of a Storm Water Pollution Plan

The permittee is required to develop a storm water pollution prevention plan. The plan is intended to identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges and describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges.

The Clean Water Act requires that all NPDES permits for storm water discharges associated with industrial activity must, at a minimum, establish Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements. This permit establishes BAT/BCT requirements in terms of requirements to develop and implement storm water pollution prevention plans and thus, is consistent with the requirements of the CWA. Currently, there is not sufficient data to develop appropriate numeric effluent limitations for storm water discharges from all the varied sources of storm water discharges associated with industrial activity covered by this permit. The facilities covered by this permit have varied potential for having different pollutants in their storm water discharges.

The development of a pollution prevention plan maintains the flexibility for a site-specific plan to be developed and implemented. The varying sizes and

complexities of the facilities should be reflected in the storm water pollution prevention plan. This adequately addresses the variable storm water management/pollution prevention opportunities available at a facility. These plans are required to achieve BAT/BCT requirements in lieu of numeric limitations. Pollution prevention measures are the most practicable and cost-effective approaches to reducing pollutants in storm water discharges and provide for flexibility for developing tailored plans and strategies. This permit identifies specific components that the plan must address and all the components of the plan are essential for reducing pollutants in storm water discharges and are necessary to reflect BAT/BCT. These components include the formation of a pollution prevention team, a description of pollutant sources, identification and implementation of measures and controls and a comprehensive site compliance evaluation.

The permittee is to consider the relevant BAT and BCT factors when developing and implementing storm water pollution prevention plans. The following factors are to be considered when evaluating BAT requirements: the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; the cost of achieving such effluent reduction; and non-water quality environmental impacts. The following factors are to be considered when evaluating BCT requirements; the reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived; the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources; the age of equipment and facilities involved; the process employed; the engineering aspects of the application of various types of control techniques; process changes; and no-water quality environmental impacts.

Other Regulatory Considerations

The General Permit will have a fixed term of one (1) year effective on June 30, 1993. Every authorization under this General Permit will expire on the same date.

All transportation facilities; landfills, land application sites and open dumps; materials recycling facilities; and steam electric power generating facilities that the Director believes are eligible for coverage under this permit will be authorized to discharge under the terms and conditions of this permit after a complete Registration Statement is submitted and the Director sends a copy of the General Permit to the owner/operator. If this General Permit is inappropriate, the owner/operator will be so notified and the requirement that an individual permit or alternate general permit is needed will remain in effect. Any facility may request an individual permit by submitting an appropriate application.

Not all pages of Part I of the General Permit will apply to every permittee. The determination of which pages apply will be based on the classification of the industrial facility and/or the industrial activity occurring at the facility. The copy of the General Permit transmitted to this owner/operator would contain only those Part I pages applicable to his facility. All permits will contain the pages of Parts II, III and IV.

VA.R. Doc. No. R93-625; Filed June 29, 1993, 12:09 p.m.

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Title of Regulation: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Effective Dates: June 30, 1993, through June 29, 1994.

Preamble:

VR 680-14-20 is a general permit regulation for discharges from nonmetallic mineral mines. These are operations primarily engaged in mining or quarrying, developing mines, or exploring for nonmetallic minerals, except fuels, such as stone or sand and gravel. This general permit would regulate discharges of process wastewater, mine pit dewatering discharges and storm water discharges from qualified operations in this industrial group. The discharges could be located on any surface waters within the boundaries of the Commonwealth of Virginia, except those where State Water Control Board regulations or policies prohibit such discharges. A general permit is issued for a category of discharges instead of to an individual discharge. Anyone who fits into the category covered by the general permit and who agrees to abide by its conditions may apply for coverage under it instead of applying for an individual permit.

The emergency regulation general permit requires that all covered facilities meet the same effluent limitations and monitoring requirements. It also specifies the information required to apply for coverage under the general permit. The general permit contains standard language required for all VPDES permits relative to monitoring and reporting of discharge quality and the management of the facility being permitted. Also, no discharge would be covered by the general permit unless the local governing body has certified that the facility complies with all applicable zoning and planning ordinances.

Issuance of this general VPDES permit would reduce the application costs and paperwork burden for the dischargers in this industrial category. It will also reduce the administrative time and burden for the Department of Environmental Quality in processin

individual permits. Thus, it will improve the administrative efficiency of the Department's permitting program and allow staff resources to be concentrated on individual VPDES permits which have more potential for impacting water quality in Virginia.

Nature of the Emergency:

This general permit will also include the storm water management requirements of the federal National Pollutant Discharge Elimination System (NPDES) regulations, as established in the Board's industrial storm water general permits being adopted through a separate rulemaking. This means that a facility covered by this general permit would not have to have another permit for their storm water discharges. However, the storm water discharges from these facilities are also affected by the Emergency Regulation for Registration Statements For Storm Water Associated With Industrial Activity (VR 680-14-15). This emergency regulation was adopted on September 22, 1992 to satisfy the permit application requirements of the federal storm water permitting regulations. Most of the facilities which are eligible for coverage under the nonmetallic mineral mining general permit have filed registration statements under the emergency regulation in order to comply with the October 1, 1992 deadline for applying for a permit to discharge storm water. They anticipated that the general permit would be effective before the emergency regulation expires on September 22, 1993 and that they would be discharging storm water in compliance with state and federal requirements at that time.

Due to unforeseen complications associated with the 1993 revisions to the Virginia Administrative Process Act, the draft general permit regulation which was to be adopted by the State Water Control Board in August will have to begin the rulemaking process anew on July 1. This will make it impossible to have a general permit in place prior to the expiration of the emergency regulation on September 22.

By adopting the general permit as an emergency regulation, the Department can begin covering these storm water discharges immediately. The general permit emergency regulation would expire within one year of its effective date and by that time the Department will have taken the regulation through the administrative process for permanent adoption.

Necessity for Action:

If the nonmetallic mineral mining general permit is not adopted as an emergency regulation, the facilties which discharge storm water must apply for a separate individual VPDES permit for those discharges. This will involve the completion and filing of another application form and the payment of the appropriate permit application fee. It is unlikely that the affected facilties will be able to complete and submit the new application form before September 22, at which time they would be subject to penalties for unauthorized discharges of storm water. There are approximately 90 establishments currently permitted under the individual VPDES permit program which may qualify for this proposed general permit.

Summary:

This regulation will establish a general VPDES permit for industrial discharges from nonmetallic mineral mines. This general permit will expedite the process of issuing permits to this category of discharges and reduce the regulatory burden on the permittee compared to the process of issuing individual VPDES permits. The regulation will allow the discharge of storm water in compliance with federal and state requirements. Unless the general permit is adopted as an emergency regulation, there will be no mechanism for these facilities to comply with the regulatory requirements for discharges of storm water after September 22, 1993.

This emergency regulation will be enforced under applicable statutes and will remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Administrative Process Act.

The State Water Control Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton
Director
Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Nonmetallic Mineral Mining.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or his designee.

"Industrial activity" means the facilities classified as Standard Industrial Classification (SIC) 1411, 1422, 1423, 1429, 1442, 1446, 1459, and 1499 (Office of Management and Budget (OMB) SIC Manual, 1987).

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 (1992). For the categories of industries identified in the "Industrial Activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401 (1992)); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

§ 2. Purpose.

This general permit regulation governs the discharge of mine pit dewatering, process waste water and storm water from active and inactive mineral mines classified as Standard Industrial Classification Codes 1411, 1422, 1423, 1429, 1442, 1446, 1459, and 1499, except as specified below. The following activities shall not have coverage under this general permit: coal mining, metal mining, mineral mines which have asphalt operations located within the mineral mine permit area, mineral mines which obtain their raw materials directly from stream beds by dredging or other means and oil and gas extraction.

§ 3. Authority for regulation.

The authority for this regulation is pursuant to subdivisions (5), (7), (10), and (14) of § 62.1-44.15 and §§ 62.1-44.15:6, 62.1-44.20 and 62.1-44.21 of the Code of Virginia; 33 USC 1251 et seq.; and the Permit Regulation (VR 680-14-01).

§ 4. Delegation of authority.

The director, or his designee, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

§ 5. Effective date of the permit.

This general permit will become effective on June 30, 1993. This general permit will expire one year from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of § 6 and the receipt of this general permit.

§ 6. Authorization to discharge.

Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the director of the Registration Statement of § 7, files the permit fee required by § 8, complies with the effluent limitations and other requirements of § 9, and provided that:

1. Individual permit. The owner shall not have been

required to obtain an individual permit as may be required in the VPDES Permit Regulation.

2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge to state waters where other board regulations or policies prohibit such discharges.

3. Local government notification. The owner shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3 of the Code of Virginia.

4. Division of Mineral Mining permit. The owner shall have a mineral mining permit for the operation to be covered by this general permit which has been approved by the Virginia Division of Mineral Mining (or associated waivered program, locality or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia.

5. Endangered or threatened species. The director may deny coverage under this general permit to any owner whose discharge to state waters may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

§ 7. Registration Statement and Notice of Termination.

A. The owner shall file a complete general VPDES permit registration statement for nonmetallic mineral mining. Any owner proposing a new discharge shall file the registration statement at least 60 days prior to the date planned for commencing construction or operation of the mineral mine. Any owner of an existing mineral mine covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 120 days prior to the expiration date of the individual VPDES permit. Any owner of an existing mineral mine not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT

NONMETALLIC MINERAL MINING

1. Name of Applicant:
(please print or type)

2. Mailing Address:

3. Telephone Number:

4. Fax Number:

5. Project Name:

6. Description of Mining Activity (Mineral Mined):

7. Primary Standard Industrial Classification (SIC) Code:
Secondary SIC Codes

8. County:

9. Location:

10. Name of Stream Receiving Discharge (e.g. Clear Creek or unnamed Tributary to Clear Creek).

11. Does this mine currently have a VPDES permit? Yes . . . No . . .

If yes, give permit number . . . . . .

12. Description of waste water treatment and/or reuse/recycle system(s): . . . . . .

13. List any chemicals added to water that could be discharged:.

14. Attach to this registration statement a schematic drawing showing the source(s) of water used on the property, the industrial operations contributing to, or using water, and the conceptual design of the methods of treatment and disposal of waste water and solids.

15. Attach to this registration statement an aerial photo or scale map which clearly shows the property boundaries, plant site, location of any mine pit dewatering, storm water or process waste water discharge and the receiving stream.

16. The owner of any proposed discharge into or adjacent to state waters or the owner of any discharge into or adjacent to state waters which has not previously been covered by a valid VPDES permit must attach to this registration statement notification from the governing body of the county, city or town in which the discharge is to take place that the location and operation of the discharging facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia.

17. Attach to this registration statement evidence that the operation to be covered by this general permit has a mining permit which has been approved by the Virginia Division of Mineral Mining (or associated waivered program) under the provisions and requirements of Title 45.1 of the Code of Virginia.

Certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature(s): . . . . . Date: . . . . . .

. . . . . Date: . . . . . .

Name of person(s) signing above: . . . . . .

(printed or typed) . . . . . .

(printed or typed) . . . . . .

Title(s): . . . . . .

.....

For Water Control Board use only:
Accepted/Not Accepted by: . . . . . Date: . . . . . .

Basin . . . . . Stream Class . . . . . Section . . . . .

Special Standards . . . . . .

Required Attachments:

1. Evidence of Approved Mining Permit

2. Local Government Ordinance Form

3. Water Use Schematic Drawing

4. Aerial Photo or Map

B. Notice of Termination

Coverage under this general permit may be terminated by the owner by filing a completed Notice of Termination. The Notice of Termination shall be filed in situations where all discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of discharges associated with industrial activity at a facility changes, when the mineral mining permit approved by the Division of Mineral Mining (or associated waivered program) expires following mine close out and final bond release or where all discharges associated with industrial activity have been covered by an individual VPDES permit. The required Notice of Termination shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT NOTICE OF TERMINATION FOR NONMETALLIC MINERAL MINING

1. General VPDES Nonmetallic Mineral Mining Permit Number:

2. Reason for Termination Request (Choose one):

a. You are no longer the owner of the facility:

b. The discharges associated with industrial activity have been eliminated:

c. The mineral mining permit approved by the Division of Mineral Mining (or associated waivered program) has expired following mine close out and final bond release:

d. All discharges associated with industrial activity have been covered by an individual VPDES permit:

3. On what date do you wish coverage under this general permit to terminate?

4. Facility Owner

Name: . . . . . .

Mailing Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

Phone: . . . . . .

5. Facility Location

Name: . . . . . .

Address: . . . . . .

City: . . . . . State: . . . . . Zip Code: . . . . . .

6. Certification:

"I certify under penalty of law that all discharges associated with industrial activity from the identified facility that are authorized by this general VPDES permit have been eliminated, that I am no longer the owner of the industrial activity, that the mineral mining permit approved by the Division of Mineral Mining (or associated waivered program) has expired following mine close out and final bond release, or that all discharges associated with industrial activity have been covered by an individual VPDES permit. I understand that by submitting this notice of termination, that I am no longer authorized to discharge in accordance with the general permit, and

that discharging pollutants to surface waters of the state is unlawful under the Clean Water Act and the State Water Control Law where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this Notice of Termination does not release an owner from liability for any violations of this permit under the Clean Water Act or the State Water Control Law."

Signature(s): . . . . . Date: . . . . . .

. . . . . Date: . . . . . .

Name of person(s) signing above: . . . . . .

(printed or typed) . . . . . .

(printed or typed) . . . . . .

Title(s): . . . . . .

§ 8. Permit Fee.

Notwithstanding the provisions of the Permit Fee Regulation (VR 680-01-01) and for the purposes of this regulation only, the fee for coverage under this general permit shall be $40.00.

§ 9. General permit.

Any owner whose registration statement is accepted by the director will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the Permit Regulation.

General Permit No.: VAG84

Effective Date: June 30, 1993.

Expiration Date: June 30, 1994.

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of nonmetallic mineral mines are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where board regulations or policies prohibit such discharges.

This general permit covers all owners or operators of point source discharges associated with activities within Standard Industrial Classifications 1411, 1422, 1423, 1429, 1442, 1446, 1459, 1499 except as specified below. Coverage includes active or inactive mineral mines that discharge: (i) storm water associated with industrial activity; (ii) mine pit dewatering; or (iii) process waste waters. Covered operations shall have a mineral mining permit approved by the Virginia Division of Mineral Mining (or associated waivered program, locality or state agency) under the provisions and requirements of Title 45.1 of the Code of Virginia. The following activities shall not have coverage under this general permit: coal mining, metal mining, mineral mines which have asphalt operations located within the mineral mine permit area, mineral mines which obtain their raw materials directly from stream beds by dredging or other means and oil and gas extraction.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Storm Water Pollution Prevention Plans, Part III - Monitoring and Reporting and Part IV - Management Requirements, as set forth herein.

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge process waste water, storm water and effluent from mine pit dewatering. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): at the point of discharge, prior to entering state waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	NL	NL	NL	1/3 Months	Estimate
Total Suspended Solids	30 mg/l	60 mg/l	NA	1/3 Months	Grab
pH (standard units)	NA	9.0*	6.0*	1/3 Months	Grab

NL = No Limitation, monitoring required
NA = Not applicable

2. Use of any additive chemical will require the discharger to obtain prior written approval from the Department's Regional Office Director.
3. There shall be no discharge of floating solids or visible foam in other than trace amounts.

* Where the Water Quality Standards (VR 680-21-08) establish alternate standards for pH, those standards shall be the maximum and minimum effluent limitations.

B. Special conditions.

1. Vehicles and equipment utilized during the mining activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or ground waters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up to the maximum extent practicable and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

2. No sewage shall be discharged from this mineral mining activity except under the provisions of another VPDES permit specifically issued therefore.

3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval is granted by the Regional Office Director.

4. The permittee shall submit a Notice of Termination in situations where all discharges associated with industrial activity authorized by this general permit are eliminated, where the owner of discharges associated with industrial activity at a facility changes, when the mineral mining permit approved by the Division of Mineral Mining (or associated waivered program) expires following mine close out and final bond release or where all discharges associated with industrial activity have been covered by an individual VPDES permit. The terms and conditions of this permit shall remain in effect until a completed Notice of Termination is submitted and approved by the director. The Notice of Termination shall be signed in accordance with Part III.G.

5. The permittee shall submit a new registration statement if the outfall location or the characteristics of a discharge covered by this general permit are altered. The new registration statement shall be filed within 30 days of the outfall relocation or change in the characteristics of the discharge.

6. This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b) (2) (C), (D), and (E), 304 (b) (2) (3) (4), and 307 (a) (2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

a. Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

b. Controls any pollutant not limited in the permit. The permit as modified or reissued under this paragraph shall also contain any other requirements of the act then applicable.

7. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

PART II.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for plan preparation and compliance.

1. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan:

a. Shall be prepared within 180 days after the effective date of this permit; and

b. Shall provide for implementation and compliance with the terms of the plan within 365 days after the effective date of this permit.

2. The plan for any facility where industrial activity commences on or after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared and provide for compliance with the terms of the plan and this permit on or before the date of submission of a Registration Statement to be covered under this permit.

3. Upon a showing of good cause, the director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity that submits a Registration Statement in accordance with the registration requirements.

B. Signature and plan review.

1. The plan shall be signed in accordance with subsection G of Part III (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with subsection C of Part III (retention of records) of this permit.

2. The permittee shall make plans available to the department upon request.

3. The director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit which are not being met by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

C. Keeping plans current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the State or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subdivision D 2 of this part (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under subdivision D 2 c of this part (spills and leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(2) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

b. Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on-site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

c. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm

water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

e. Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on-site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

3. Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

b. Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

c. Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

d. Inspections. In addition to or as part of the comprehensive site compliance evaluation required under subdivision D 4 of this part of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

g. Sediment and erosion control. The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

h. Management of runoff. The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see subdivision D 2 of this part (description of potential pollutant sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as

for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

a. Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with subdivision D 2 of this part (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with subdivision D 3 of this part (measures and controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.

c. A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with subdivision D 4b of this part of this permit shall be made and retained as part of the storm water pollution prevention plan as required in subsection C of Part III. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with subsection G of Part III (signatory requirements) of this permit and retained as required in subsection C of Part III.

5. Consistency with other plans. Storm water pollution prevention plans may reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the Clean Water Act or Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

PART III.
MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.

2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act as published in the Federal Register (40 C.F.R. Part 136 (1992)).

3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.

4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Recording of results.

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

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

2. The person(s) who performed the sampling or measurements;

3. The dates analyses were performed;

4. The person(s) who performed each analysis;

5. The analytical techniques or methods used; and

6. The results of such analyses and measurements.

C. Records retention.

All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be made a

part of the pollution prevention plan and shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

D. Additional monitoring by permittee.

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the Virginia State Water Control Law, Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the director. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the director.

F. Reporting requirements.

1. The permittee shall submit original monitoring reports of each quarter's performance to the Department's Regional Office once per year, on or before the 10th of January.

2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the Department's Regional Office with the monitoring report at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times and/or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The Department's Regional Office Director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in subdivisions 2a through 2c of this subsection regarding each such discharge immediately, that is as quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this subdivision.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations or pollutant management activities, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities or pollutant management activities, or (vi) flooding or other acts of nature.

If the regional office cannot be reached, the Department maintains a 24-hour telephone service in Richmond (804-527-5200) to which the report required above is to be made.

G. Signatory requirements.

Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public

agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the director shall be signed by:

a. One of the persons described in subdivision 1 a, b, or c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b, or c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the Department prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

H. Representative discharge.

When a facility has two or more exclusively storm water outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and include in the pollution prevention plan that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each exclusively storm water outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided in the pollution prevention plan.

I. Releases in excess of reportable quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

PART IV.
MANAGEMENT REQUIREMENTS.

A. Change in discharge or management of pollutants.

1. Any permittee proposing a new discharge or the management of additional pollutants shall submit a registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new pollutant management activities or processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. All discharges or pollutant management activities

authorized by this permit shall be made in accordance with the terms and conditions of the permit. The permittee shall submit a new registration statement 60 days prior to all expansions, production increases, or process modifications, that will result in the discharge or management of new or increased pollutants. The discharge or management of any pollutant more frequently than, or at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

3. The permittee shall promptly provide written notice of the following:

a. Any new introduction of pollutant(s), into treatment works or pollutant management activities which represents a significant increase in the discharge or management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment, treatment works, or discharge(s), if such establishment, treatment works, or discharge(s) were discharging or has the potential to discharge pollutants to state waters; and

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, pollutant management activities, or discharge(s) that was introducing pollutants into such treatment works at the time of issuance of the permit.

c. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 ug/l);

(2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for the pollutant in the registration statement; or

(4) The level established in accordance with regulation under Section 307(a) of the Act and accepted by the director.

d. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 ug/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the registration statement;

(4) The level established by the director.

Such notice shall include information on: (i) the characteristics and quantity of pollutants to be introduced into or from such treatment works or pollutant management activities; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works or pollutants managed at a pollutant management activity; and (iii) any additional information that may be required by the director.

B. Treatment works operation and quality control.

1. Design and operation of facilities and/or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the Department and in conformity with the conceptual design, or the plans, specifications, and/or other supporting data accepted by the director. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design and/or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, management of pollutant activities and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities and pollutant management activities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to insure compliance with the conditions of this permit.

c. Maintenance of treatment facilities or pollutant management activities shall be carried out in such a manner that the monitoring and limitation

requirements are not violated.

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the permittee shall notify the Department's Regional Office promptly at least 10 days prior to the bypass. After considering its adverse effects the Regional Office Director may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("Severe Property Damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if a bypass occurs during normal periods of equipment downtime, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the Department's Regional Office as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision F 1 of this part and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset.

A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. The permittee submitted a notification of noncompliance as required by subsection F of Part II; and

4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act.

I. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability.

The provisions of this permit are severable.

K. Duty to reregister.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. Right of entry.

The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the Department's Regional Office 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the Department includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The Department does not within the 30-day time period notify the existing owner and the proposed owner of the Board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

N. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the Department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Law. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the Department may make the information available to the public without further notce. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et seq. and 62.1-44.21 of the Code of Virginia). Notwithstanding the foregoing, any supplemental information that the Department may obtain from filings made under the Virginia Toxics Substance Information Act (TSIA) shall be subject to the confidentiality requirements of TSIA.

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;

2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

O. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in

accordance with provisions of Section 307(a) of the Clean Water Act (U.S.C. 33 1251 et seq); or

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required.

The Director may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit.

3. The discharge violates the terms or conditions of this permit.

4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.

5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Except as provided in permit conditions on "bypassing" (subsection F of this part), and "upset" (subsection G of this part) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

VA.R. Doc. No. R93-626; Filed June 29, 1993, 12:07 p.m.

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Title of Regulation: **VR 680-41-01:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15(7) of the Code of Virginia.

Effective Dates: June 29, 1993, through June 28, 1994.

Preamble:

VR 680-41-01:1 establishes amended Public Participation Guidelines (PPGs) for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations. Legislation enacted by the General Assembly which goes into effect on July 1, 1993, imposes new requirements on agencies of state government for processing rulemakings under the Administrative Process Act (Act).

One of the new requirements of the amended Act mandates that the State Water Control Board (Board) include as part of their PPGs a general policy for the use of standing or ad hoc advisory groups and

consultation with groups and individuals registering interest in working with the Board. Such policy shall address the circumstances in which the Board considers such groups or consultation appropriate and intends to make use of such panels or consultation.

The legislation further requires the Board to set out in their PPGs any methods for the identification and notification of interested persons, and any specific means of seeking input from interested persons or groups which the Board intends to use in addition to the Notice of Intended Regulatory Action.

Beginning on July 1, 1993, the new legislation will require PPGs to contain such provisions. Because PPGs must be in compliance with the Act before the Board can initiate any regulatory actions, it is important that PPGs that will satisfy the new requirements of the Act be in place and ready for use before July 1, 1993.

In addition, because the provisions of the PPGs are a declaration of the means by which the public is involved in Board regulation making, the Board has, on a limited basis, amended language of the PPGs to accommodate soon-to-take-effect requirements of the Act.

For example, the PPGs have been amended to allow the Board to, at its discretion, begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit input.

Nature of Emergency:

The Board proposes to adopt emergency PPGs in order to ensure the Board's ability to process necessary regulatory actions after July 1, 1993. The Board is responsible for the administration of several programs, both state and federal, whose purpose is to protect and enhance the quality of the Commonwealth's water resources. Among these are the Virginia Pollutant Discharge Elimination System Permit (VPDES), the Underground Storage Tank and the Aboveground Storage Tank programs. Without PPGs which satisfy the new requirements of the Act, the Board will be unable to process any regulatory actions until such time as permanent PPGs can be adopted. Under the Act, it could take as long as a year to adopt permanent PPGs which would result in necessary regulatory actions taking as much as 2 years to complete.

Necessity for Action:

The adoption of emergency PPGs is critical to continued operation of many of the programs of the Board. For example, legislation passed by the 1993 Session of the General Assembly amended various provisions of the Underground Storage Tank program which will require amending the regulations promulgated for administration of the program. Without emergency PPGs, the Board would be unable to incorporate and implement the amended provisions for approximately 2 years. Since these amendments benefit entities regulated by this program, failure to proceed as soon as possible would impose unnecessary hardship on the regulated community.

Failure to adopt emergency PPGs would also jeopardize the Board's ability to complete new rulemaking processes for the adoption of general VPDES permits for storm water discharges associated with industrial activities in time to allow facilities to remain in compliance with requirements of the Clean Water Act and federal regulations. The Board estimates that there are 10000 facilities to be permitted under the storm water program. Adoption of general permits for these facilities would ease the administrative burden on the regulated community as well as improve the administrative efficiency of the Board's permitting program.

Summary:

This regulation will establish PPGs which will allow the Board to initiate after July 1, 1993 regulatory action processes to adopt, amend or repeal necessary regulations, in conformance with the amended Act.

This emergency regulation will be enforced under applicable statutes and remain in full force and effect for one year from the effective date, unless sooner modified or vacated or superseded by permanent regulations adopted pursuant to the Act and this emergency regulation.

The Board will receive, consider, and respond to petitions by any interested persons at any time for the reconsideration or revision of this regulation.

It is so ordered.

BY:

/s/ Richard N. Burton
Director, Department of Environmental Quality
Date: June 28, 1993

APPROVED BY:

/s/ Elizabeth H. Haskell
Secretary of Natural Resources
Date: June 17, 1993

APPROVED BY:

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: June 23, 1993

FILED WITH:

/s/ Ann M. Brown
Deputy Registrar of Regulations
Date: June 29, 1993

VR 680-41-01:1. Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this regulation, 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.

"Agency" means the administrative agency of the State Water Control Board, including staff, etc., established pursuant to the Environmental Protection Law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the collegial body of the State Water Control Board, established pursuant to the Environmental Protection Law as the legal authority to adopt regulations.

"Director" means the ~~executive~~ director of the ~~State Water Control Board~~ *Department of Environmental Quality* or his designee.

"Environmental Protection Law" means the provisions found in the Code of Virginia authorizing the approving authority or agency or both to make regulations or decide cases or containing procedural requirements thereof including, but not limited to, Chapter 3.1 (§ 62.1-44.2 et seq.), Chapter 3.2 (§ 62.1-44.36 et seq.), Chapter 24 (§ 62.1-242 et seq.), and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

Unless specifically defined in the Environmental Protection Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 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, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

~~C.~~ *B.* 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.~~ *C.* Any person may petition the approving authority 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.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations.

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The ~~agency~~ *director* shall form an ad hoc advisory group , ~~or~~ utilize a standing advisory committee , *or consult with groups and individuals registering interest in working with the agency* to assist in the drafting and formation of the proposal ~~unless the approving authority specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee.~~ *when:*

1. a. The director, in the director's sole discretion, determines to form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups and individuals; or

b. The agency receives written comments from at least 25 persons during the comment period of the notice of intended regulatory action (NOIRA) requesting the director to form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups and individuals; and

2. The subject matter of the NOIRA has not previously been the subject matter of a NOIRA published in the Register of Regulations by the agency.

When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public.

D. The agency shall issue a ~~notice of intended regulatory action (NOIRA)~~ *NOIRA* whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A brief statement as to the need for regulatory action.

b. A brief description of alternatives available, if any, to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA.

d. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

e. A statement of the agency's intent to hold at least one informational proceeding or public hearing on the proposed regulation after it is published.

f. A statement inviting comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of the proposal, unless the director has already determined to form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals pursuant to subdivision 1 of subsection 3.C.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the agency to proceed without holding a public meeting *or the director specifically determines the agency can proceed without holding a public meeting in those cases where the subject matter of the NOIRA has previously been the subject matter of a NOIRA published in the Register of Regulations by the agency .*

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in the Virginia Register, time and place of the public meeting(s).

3. 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.

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may ~~prepare~~ *complete* the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established, *a standing advisory committee utilized, or groups and individuals consulted* the draft regulation shall be developed in consultation with ~~such group~~ *the selected advisor* . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group *, standing advisory committee or groups and individuals* 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 approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. The identity of any locality particularly affected by the proposed regulation. For purposes of these guidelines the term "locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

~~4.~~ *5.* A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ *the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare* .

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost , *expressed as a dollar figure or range,* to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where ~~an~~ *the* agency 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.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. 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.

e. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

~~5.~~ *6.* The date, time and place of at least one ~~public hearing~~ *informational proceeding* held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.) The ~~hearing(s)~~ *informational proceeding(s)* may be held at any time during the public comment period and, whenever practicable, no less than 10 days prior to the close of the public comment period. The ~~hearing(s)~~ *informational proceeding(s)* may be held in such location(s) as the agency determines will best facilitate input from interested persons.

I. The public comment period shall close no less than 60 days after publication of the NOPC in the Virginia Register.

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in the Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

~~A. All regulatory actions for which a NOIRA has been published in the Virginia Register prior to February 10, 1993, shall be processed in accordance with the VR 680-40-01 Public Participation Guidelines.~~

~~B. All regulatory actions for which a NOIRA has not been published in the Virginia Register prior to February, 10, 1993, shall be processed in accordance with this~~

~~regulation (VR 680-40-01:1).~~

The amending provisions contained in this emergency regulation shall apply only to regulatory actions for which a NOIRA is filed with the Registrar of Regulations at or after the time these guidelines take effect.

VA.R. Doc. No. R93-622; Filed June 29, 1993, 12:05 p.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Title of Regulation: **VR 675-01-01:1. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Effective Dates: June 24, 1993, through June 23, 1994.

Preamble:

The Board for Waterworks and Wastewater Works Operators intends to promulgate emergency regulations as provided for in § 9-6.14:4.1 C 5 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of waterworks and wastewater works operators in Virginia.

Pursuant to the Administrative Process Act, the Board for Waterworks and Wastewater Works Operators is required to promulgate public participation guidelines before any further regulatory action can commence. The Board shall receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

The emergency regulations governing the public participation process will be effective until June 1994, the anticipated effective date of the final regulation.

Approved:

/s/ Bonnie S. Salzman
Director, Department of Commerce
Date: June 24, 1993

/s/ Cathleen A. Magennis
Secretary of Economic Development
Date: June 10, 1993

/s/ Lawrence Douglas Wilder
Governor, Commonwealth of Virginia
Date: June 14, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: June 24, 1993

VR 675-01-01:1. Public Participation Guidelines.

§ 1. Mailing list.

The Board for Waterworks and Wastewater Works Operators (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations.

2. "Notice of Comment Period" and public hearings, the subject of which is proposed or existing regulations.

3. Notice that the final regulations have been adopted.

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulations otherwise properly adopted under the Administrative Process Act.

§ 2. Placement on the list; deletion.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency at its discretion, may add to the list any person, organization, or publication it believes will serve the purpose of responsible participation in the formation or promulgation of regulations. Persons on the list will be provided all information stated in § 1. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals and organizations will be deleted from the list.

§ 3. Petition for rulemaking.

Any person may petition the agency to adopt or amend any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall consider and respond to the petition within 180 days. The agency shall have sole authority to dispose of the petition.

§ 4. Notice of intent.

At least 30 days prior to the publication of the "Notice of Comment Period" and the filing of proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action." This notice will provide for at least a 30-day comment period and shall state whether or not they intend to hold a public hearing. The agency is required to hold a hearing on proposed regulation upon request by the Governor or from 25 or more persons. Further, the notice shall describe the subject matter and intent of the planned regulation. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia

Register.

§ 5. Informational proceedings or public hearings for existing rules.

Within two years of the promulgation of a regulation, the agency shall evaluate it for effectiveness and continued need. The agency shall conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulation. Notice of such proceedings shall be transmitted to the Registrar for inclusion in the Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 6. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of regulation will occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register.

If there are one or more changes with substantial impact on a regulation, any person may petition the agency 30 thirty days from the publication of the final regulation to request an opportunity for oral or written submittals on the changes to the regulations. If the agency received requests from at least 25 persons for an opportunity to make oral or written comment, the agency shall suspend the regulatory process for 30 days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact.

If the Governor finds that one or more changes with substantial impact have been made to proposed regulation, he may suspend the regulatory process for thirty days to require the agency to solicit further public comment on the changes to the regulation.

A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 7. Advisory committees.

The Board intends to appoint advisory committees as it deems necessary to provide adequate participation in the formation, promulgation, adoption, and review of regulations. Such committees are particularly appropriate when other interested parties may possess specific expertise in the area of proposed regulation. The advisory committee shall only provide recommendations to the agency and shall not participate in any final decision making actions on a regulation.

When identifying potential advisory committee members the agency may use the following:

a. directories of organizations related to the profession,

b. industry, professional and trade associations' mailing lists,

c. and lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 8. Applicability.

Sections 1 through 3 and Sections 5 and 7 shall apply to all regulations promulgated and adopted in accordance with § 9-6.14:9 of the Code of Virginia except those regulations promulgated in accordance with § 9-6.14:4.1 of the Administrative Process Act.

VA.R. Doc. No. R93-589; Filed June 24, 1993, 2:28 p.m.

PROPOSED

AT RICHMOND, JULY 29, 1993

IN THE MATTER OF CASE NO. MCO930426

SINGLE STATE INSURANCE
REGISTRATION PROGRAM

ADMINISTRATIVE ORDER

WHEREAS, the Congress of the United States enacted Public Law 102-140 which in part amended 49 U.S.C. § 11506 - Registration of Motor Carriers by a State;

WHEREAS, the Interstate Commerce Commission, by Order Ex Parte No. M-100 mandated that each State participating in the Single State Insurance Registration Plan must adopt a registration system in compliance with the regulations adopted by it within the said Order; and

WHEREAS, § 56-304.15 of the Code of Virginia, as amended, directs the Commission to implement any such regulations as needed to participate in federally mandated programs intended to accomplish objectives similar to those provided in Title 56, Chapter 12; and

FURTHER the Interstate Commerce Commission has mandated that under the Single State Insurance Registration Plan, the Motor Carriers registering under the plan shall file their applications between August 1st and the 30th day of November of the year preceding the registration year.

NOW THEREFORE:

The Commission intends to adopt the Rules and Regulations set forth in Exhibit A attached hereto, on an interim basis, on the 1st of August 1993 to allow Motor Carriers to begin submitting their applications. It is further the intention of the Commission to allow the public to comment on, object to, as well as request a hearing on the proposed Rules and Regulations prior to their permanent implementation; accordingly,

IT IS ORDERED:

(1) That a copy of this Order inclusive of Exhibit A be published in the Virginia Register; and

(2) That any member of the public that desires to may make comments on or objections to the proposed Rules and Regulations on or before the 28th day of September 1993. Said comments or objections should be sent to: State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23216.

EXHIBIT A

SINGLE STATE INSURANCE REGISTRATION

§ 1023.1. Definitions.

(a) *The Commission.* The State Corporation Commission.

(b) *Motor carrier* and *carrier.* A person authorized to engage in the transportation of passengers or property, as a common or contract carrier, in interstate or foreign commerce, under the provisions of 49 U.S.C. §§ 10922, 10923, or 10928.

(c) *Motor vehicle.* A self-propelled or motor driven vehicle operated by a motor carrier in interstate or foreign commerce under authority issued by the Commission.

(d) *Principal place of business.* A single location that serves as a motor carrier's headquarters and where it maintains or can make available its operational records.

(e) *State.* A State of the United States or the District of Columbia.

§ 1023.2. Participation by States.

A State is eligible to participate as a registration State and to receive fee revenue only if, as of January 1, 1991, it charged or collected a fee for a vehicle identification stamp or a number pursuant to the provisions of the predecessor to this Part.

§ 1023.3. Selection of registration State.

(a) Each motor carrier required to register and pay filing fees must select a single participating State as its registration State. The carrier must select the State in which it maintains its principal place of business, if such State is a participating State. A carrier that maintains its principal place of business outside of a participating State must select the State in which it will operate the largest number of motor vehicles during the next registration year. In the event a carrier will operate the same largest number of vehicles in more than one State, it must select one of those States.

(b) A carrier may not change its registration State unless it changes its principal place of business or its registration State ceases participating in the program, in which case the carrier must select a registration State for the next registration year under the standards of paragraph (a) of this section.

(c) A carrier must give notice of its selection to the State commission of its selected registration State, and, the State commission of its prior registration State, within 30 days after it has made its selection. If a carrier changes its principal place of business during the annual registration period specified in § 4 (b) (2) of this part, the carrier may continue to use its prior registration State, if any, for the next registration year.

(d) A carrier must give notice of its selection to its

insurer or insurers as soon as practicable after it has made its selection.

§ 1023.4. Requirements for registration.

(a) Except as provided in paragraph (c) (1) of this section with regard to a carrier operating under temporary authority, only a motor carrier holding a certificate or permit issued by the Commission under 49 U.S.C. 10922 or 10923 shall be required to register under these standards.

(b) A motor carrier operating in interstate or foreign commerce in one or more participating States under a certificate or permit issued by the Interstate Commerce Commission shall be required to register annually with a single registration State, and such registration shall be deemed to satisfy the registration requirements of all participating States.

(1) The registration year will be the calendar year.

(2) A carrier must file its annual registration application between the 1st day of August and the 30th day of November of the year preceding the registration year. A carrier that intends to commence operating during the current registration year may register at any time, but it must do so before it commences operating.

(3) The registration application must be in the form appended to this Part and must contain the information and be accompanied by the fees specified in subsection (c) below. There will be no prorating of fees to account for partial year operations.

(4) A carrier that has changed its registration State since its last filing must identify the registration State with which it previously filed.

(c) A motor carrier must file, or cause to be filed, the following with its registration State:

(1) Copies of its certificates and/or permits. A carrier must supplement its filing by submitting copies of any new operating authorities as they are issued. Once a carrier has submitted copies of its authorities, it may thereafter satisfy the filing requirement by certifying that the copies are on file. A carrier may, with the permission of its registration State, submit a summary of its operating authorities in lieu of copies. A carrier granted emergency temporary authority or temporary authority having a duration of 120 days or less is not required to file evidence of such authority, but it must otherwise comply with the requirements of this section;

(2) A copy of its proof of public liability security submitted to and accepted by the Interstate Commerce Commission under 49 C.F.R. Part 1043 or a copy of an order of the Interstate Commerce Commission approving a public liability self-insurance application or other public liability security or agreement under the provisions of that Part. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted, or caused to be submitted, a copy of its proof or order of the Interstate Commerce Commission, it may thereafter satisfy the filing requirement by certifying that it has done so and that its security, self-insurance, or agreement remains in effect;

(3) A copy of its designation of an agent or agents for service of process submitted to and accepted by the Interstate Commerce Commission under 49 C.F.R. Part 1044. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted a copy of its designation, it may thereafter satisfy the filing requirement by certifying that its designation is on file; and

(4) A fee for the filing of proof of insurance. In support of such fee, the carrier must submit the following information:

(i) The number of motor vehicles it intends to operate in each participating State during the next registration year;

(ii) The per vehicle fee each pertinent participating State charges, which fee must equal the fee, not to exceed $10, that such State collected or charged as of November 15, 1991;

(iii) The total fee due each participating State; and

(iv) The total of all fees specified in paragraph (c) (4) (iii) of this section.

(d) Consistent with its obligations under paragraph (c) (2) of this section, a carrier must cause to be timely filed with its registration State copies of any notice of cancellation or of any replacement certificates of insurance, surety bonds, or other security filed with the Interstate Commerce Commission under 49 C.F.R. Part 1043.

(e) A carrier must make such supplemental filings at any time during the registration year as may be necessary to specify additional vehicles and/or States of operation and to pay additional fees.

(f) A motor carrier must submit to its insurer or insurers a copy of the supporting information, including any supplemental information, filed with its registration State under paragraphs (c) (4) and (e) of this section.

(g) The Commission will not collect a fee for any participating State which exceeds the fee system set forth above. This includes fees for the registration or filing of evidence of insurance whether assessed directly upon the carrier or indirectly upon the insurance provider or othe

party who seeks reimbursement from the carrier.

§ 1023.5. Registration receipts.

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4 of this Part, the Commission will issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section.

(1) The receipt will contain only information identifying the carrier and specifying the States for which fees were paid. Supplemental receipts need contain only information relating to their underlying supplemental registrations.

(b) Receipts issued pursuant to a filing made during the annual registration period specified in § 1023.4 (b) (2) of this part will be issued within 30 days. All other receipts will be issued by the 30th day following the date of filing of a fully acceptable supplemental registration application. All receipts shall expire at midnight on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles over the highways of the Commonwealth of Virginia only when it has paid the appropriate fees as set forth above in § 1023.4 for operations in Virginia.

(d) A motor carrier may make copies of receipts to the extent necessary to comply with the provisions of paragraph (c) below. However, it may not alter a receipt or a copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles a copy(ies) of its receipt(s), indicating that it has filed the required proof of insurance and paid the required fees.

(f) The driver of a motor vehicle must present a copy(ies) of a receipt(s) for inspection by any authorized Special Agent of the Commission on reasonable demand.

(g) Once a receipt for the proof of insurance has been issued by a participating State and the required fees paid for operations into and through the Commonwealth of Virginia, no further decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated solely in interstate commerce under this program shall be required.

§ 1023.6. Registration State accounting.

(a) The Commission will, on or before the last day of each month, allocate and remit to each other participating State the appropriate portion of the fee revenue registrants submitted during the preceding month. Each remittance must be accompanied by a supporting statement identifying registrants and specifying the number of motor vehicles for which each registrant submitted fees. The Commission will submit a report of "no activity" to any other participating State for which it collected no fees during any month.

(b) The Commission will maintain records of fee revenue received from and remitted to each other participating State. Such records must specify the fees received from and remitted to each participating State with respect to each motor carrier registrant. The Commission will retain such records for a minimum of 3 years.

(c) The Commission will keep records pertaining to each of the motor carriers for which it acts as a registration State. The records must, at a minimum, include copies of annual and supplemental registration applications containing the information required by § 1023.4 (c). The Commission will retain all such records for a minimum of 3 years.

§ 1023.7. Violations unlawful; civil sanctions.

Any violation of the provisions of these standards is unlawful and penalties will be imposed in accordance with § 56-304.12 of the Code of Virginia.

VA.R. Doc. No. R93-752; Filed August 4, 1993, 11:21 a.m.

* * *

FINAL

AT RICHMOND, JULY 23, 1993

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC930038

Ex Parte: in re: Promulgation of rules pursuant to the Securities Act and Retail Franchising Act

ORDER AMENDING RULES

Pursuant to the Commission's order dated June 8, 1993, the Division of Securities and Retail Franchising of the Commission caused to be published in Vol. 9, Issue 20, p. 3653 (6/28/93) of the Virginia Register notice of proposed changes to Securities Act Rule 503 and Retail Franchising Act Rule S. VRFA 9. Among other things, the notice stated that written comments or requests for a hearing in regard to the proposed changes must be filed by July 15, 1993. No comments or requests for a hearing were filed as of such date.

The Commission, upon consideration of the proposed changes, is of the opinion and finds that they should be adopted as proposed and should become effective as of

August 1, 1993; it is, therefore,

ORDERED:

(1) That Securities Act Rule 503 be, and it hereby is, amended as follows: In paragraph A.2, the phrase "Rule 230.262 (a), (b) or (c)" is substituted for the phrase "Rule 230.252 (c), (d), (e) or (f)";

(2) That Retail Franchising Act Rule S. VRFA 9 be, and it hereby is, amended as follows: In paragraph A, "$500" is substituted for "$250"; in paragraph B, "$250" is substituted for "$150"; and, in paragraph C, "$100" is substituted for "$50";

(3) That the foregoing amendments shall become effective on August 1, 1993; and

(4) That this case be, and it hereby is, dismissed and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent to each of the following: Securities Regulation and Law Report, c/o The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037; Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646; and, the Virginia Register of Regulations.

S. VRFA 9 REQUIRED FEES:

A. A $500.00 fee must accompany the application for registration. The check must be made payable to the Treasurer of Virginia.

B. A $250.00 fee must accompany the application for renewal for each effective franchise registration to be renewed. This fee covers any amendments to the registration application which accompany or are part of the application to renew. The check must be made payable to the Treasurer of Virginia.

C. A $100.00 fee must accompany all post-effective amendments, unless submitted in connection with an application for renewal. The check must be made payable to the Treasurer of Virginia.

Rule 503 Uniform Limited Offering Exemption

Preliminary Notes

1. Nothing in this exemption is intended to relieve, or should be construed as in any way relieving, issuers or persons acting on their behalf from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of the Act.

2. In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule.

3. Nothing in this Rule is intended to exempt registered broker-dealers or agents from the due diligence standards otherwise applicable to such registered persons.

4. Nothing in this Rule is intended to exempt any person from the broker-dealer or agent registration requirements of the Act.

RULE

For the purpose of the limited offering exemption referred to in Section 13.1-514 B.13. of the Act, the following securities are determined to be exempt from the securities registration requirements of the Act:

A. Any securities offered or sold in compliance with Securities Act of 1933, Regulation D ("Reg. D"), Rules 230.501-230.503 and 230.505 or 230.506 as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758 and 33-6825 and which satisfy the following further conditions and limitations:

1. The issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that all persons who offer or sell securities subject to this Rule are registered in accordance with Section 13.1-505 of the Act.

2. No exemption under this Rule shall be available for the securities of any issuer if any of the persons described in Securities Act of 1933, Regulation A, Rule 230.262(a), (b), or (c):

a. Has filed a registration statement which is subject of a currently effective stop order entered pursuant to any state's securities law within five years prior to the commencement of the offering.

b. Has been convicted within five years prior to the commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

c. Is currently subject to any state's administrative order or judgment entered by that state's securities administrator within five years prior to the commencement of the offering or is subject to any state's administrative order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the

commencement of the offering.

d. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities.

e. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years prior to the commencement of the offering, permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state.

f. The prohibitions of paragraphs a., b., c. and e. above shall not apply if the party subject to the disqualifying order, judgment or decree is duly licensed or registered to conduct securities related business in the state in which the administrative order, judgment or decree was entered against such party.

g. Any disqualification caused by this subsection is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification, or the Commission, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption under this Rule be denied.

3. The issuer shall file with the Commission no later than 15 days after the first sale in this state from an offering being made in reliance upon this exemption:

a. A notice on Form D (17 CFR 239.500).

b. An undertaking by the issuer to promptly provide, upon written request, the information furnished by the issuer to offerees.

c. An executed consent to service of process appointing the Clerk of the State Corporation Commission, unless a currently effective consent to service of process is on file with the Commission.

d. A filing fee of $250.00.

4. In all sales to nonaccredited investors, the issuer and any person acting on its behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that the investment is suitable for the purchaser as to his/her other security holdings and financial situation and needs.

5. The Commission may, upon request, waive the examination requirements of Rule 221 for an agent of the issuer offering and/or selling securities exempted by this Rule upon a showing of good cause; provided, however, that the agent has not participated in more than 2 securities offerings during the 18 months prior to the request for waiver.

6. Offers and sales of securities which are exempted by this Rule may not be combined with offers and sales of securities exempted by any other Rule or section of the Act; however, nothing in this limitation shall act as an election. The issuer may claim the availability of any other applicable exemption should, for any reason, the securities or persons fail to comply with the conditions and limitations of this exemption.

7. In any proceeding involving this Rule, the burden of proving the exemption or any exception from a definition or condition is upon the person claiming it.

B. The exemption authorized by this Rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

VA.R. Doc. No. R93-757; Filed August 4, 1993, 11:21 a.m.

DIRECTOR'S ORDER NUMBER TWENTY-TWO (93)

VIRGINIA'S SIXTEENTH AND TWENTY-FOURTH INSTANT GAME LOTTERY, "BREAK THE BANK"; 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 sixteenth and twenty-fourth instant game lottery, "Break the Bank," will officially end at midnight on Thursday, August 19, 1993. The last day for lottery retailers to return for credit unsold tickets from "Break the Bank" will be Thursday, September 9, 1993. The last day to redeem winning tickets for "Break the Bank" will be Tuesday, February 15, 1994, 180 days from the declared official end of the games. Claims for winning tickets from "Break the Bank" will not be accepted after that date. Claims which are mailed and received in an envelope bearing a United States Postal Service postmark of February 15, 1994, 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: July 16, 1993

VA.R. Doc. No. R93-750; Filed August 3, 1993, 11:57 a.m.

Virginia Tax Bulletin

Virginia Department of Taxation

JULY 16, 1993 93-8

INTEREST RATES
THIRD QUARTER 1993

Rates remain unchanged: The federal rates for the third quarter of 1993 remain at 7% for tax underpayments (assessments), 6% for tax overpayments (refunds), and 9% for "large corporate underpayments" as defined in I.R.C. § 6621(c). Va. Code § 58.1-15 provides that the underpayment rate for Virginia taxes will be 2% higher than the corresponding federal rates. Accordingly, the Virginia rates for the second quarter of 1993 remain at 9% for tax underpayments, 6% for tax overpayments, and 11% for "large corporate underpayments".

Rate for Addition to Tax for Underpayments of Estimated Tax

Taxpayers whose taxable year ends on June 30, 1993: For the purpose of computing the addition to the tax for underpayment of Virginia estimated income taxes on Form 760C (for individuals, estates and trusts), Form 760F (for farmers and fishermen) or Form 500C (for corporations), the second quarter 9% underpayment rate will apply through the due date of the return, October 15, 1993.

Local Tax

Assessments: Localities assessing interest on delinquent taxes pursuant to Va. Code § 58.1-3916 may impose interest at a rate not to exceed 10% for the first year of delinquency, and at a rate not to exceed 10% or the federal underpayment rate in effect for the applicable quarter, whichever is greater, for the second and subsequent years of delinquency. For the third quarter of 1993, the federal underpayment rate is 7%.

Refunds: Localities which have provided for refund of erroneously assessed taxes may provide by ordinance that such refund be repaid with interest at a rate which does not exceed the rate imposed by the locality for delinquent taxes.

Recent Interest Rates

Accrual Period Beginning	Through	Overpayment (Refund)	Underpayment (Assessment)	Large Corporate Underpayment
1-JAN-87	30-SEP-87	8%	9%	—
1-OCT-87	31-DEC-87	9%	10%	—
1-JAN-88	31-MAR-88	10%	11%	—
1-APR-88	30-SEP-88	9%	10%	—
1-OCT-88	31-MAR-89	10%	11%	—
1-APR-89	30-SEP-89	11%	12%	—
1-OCT-89	31-MAR-91	10%	11%	—
1-APR-91	30-JUN-91	9%	10%	—
1-JUL-91	31-DEC-91	9%	12%	14%
1-JAN-92	31-MAR-92	8%	11%	13%
1-APR-92	30-SEP-92	7%	10%	12%
1-OCT-92	30-SEP-93	6%	9%	11%

For additional information: Contact the Taxpayer Assistance Section, Office Services Division, Virginia Department of Taxation, P. O. Box 1880, Richmond, Virginia 23282-1880, or call the following numbers for additional information about interest rates and penalties.

Individual & Fiduciary Income Tax	(804) 367-8031
Corporation Income Tax	(804) 367-8036
Withholding Tax	(804) 367-8038
Soft Drink Excise Tax	(804) 367-8016
Aircraft Sales & Use Tax	(804) 367-8098
Other Sales & Use Taxes	(804) 367-8037

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **VR 460-04-8.7. Client Appeals.**

Governor's Comment:

I recommend approval. Additionally, I will initiate a study which will determine the actual costs to the Commonwealth to cover Medicaid benefits for terminated and appealing recipients during the Virginia agency appeals process.

/s/ Lawrence Douglas Wilder
Governor
Date: August 4, 1993

VA.R. Doc. No. R93-754; Filed August 5, 1993, 10:42 a.m.

THE LEGISLATIVE Record

VOLUME 3 NUMBER 3 VIRGINIA DIVISION OF LEGISLATIVE SERVICES AUGUST 1993

HJR 645: The Virginia Mine Safety Law of 1966

July 13, 1993, Richmond

The Joint Subcommittee Studying the Need for Modifications to the Mine Safety Law of 1966 received extensive background information at the group's second meeting, after which the panel endorsed restructuring Virginia's mine safety law to contain separate standards for surface coal, underground coal, surface mineral, and underground mineral mining.

Results of Survey

Following the subcommittee's June meeting, a questionnaire was distributed to 464 persons with an interest in coal or mineral mining in Virginia. The 175 respondents expressed their opinions on issues concerning the adequacy of the existing mine safety law. The number of persons responding to the questionnaire whose backgrounds were in coal mining and mineral mining was almost equal. In addition to the overall results, the responses were cross-tabulated according to the industry segment specified, the types of mining experience, years of mining experience, and job position. Subcommittee members were also provided with the written comments of over 100 of the respondents.

The survey results indicated that the respondents disapprove of a "one size fits all" approach to mining safety laws. Over 70 percent of those answering the questionnaire disagreed with the use of identical standards for underground and surface mining operations, and for coal and mineral mining operations. Another trend spotted from the survey results was general satisfaction with specific technical standards now in the mine safety law. Most respondents felt that the current law is adequate in such areas as certification, transportation, equipment, roofing and rib control, fire prevention and control, and mine rescue. They were less satisfied with the current standards for dust, other airborne contaminants, and noise levels.

The survey results also indicate that the biggest areas of possible controversy, as indicated by divisions between industry segments or position classifications, involve broad policy questions rather than technical issues. Some of the areas where survey responses lacked consensus were (i) including standards for miner health, (ii) assessing civil penalties for program violations, (iii) establishing

standards through regulation rather than by statute, and (iv) paying for mine safety services by assessing fees.

Relationship of Violations, Orders, and Accidents

A critical indicator of the effectiveness of the Mine Safety Law is its success in addressing the causes of accidents and fatalities. The Department of Mines, Minerals and Energy conducted an analysis of the relationships between the causes of mining accidents and fatalities, violations of mining standards, and closure orders issued by the department.

Mine safety law and regulations address the cause of mineral mining accidents in 75 percent of the incidents studied between 1988 and 1992. Within this time period, the percentage of accidents and fatalities for which the cause was addressed by the Mine Safety Law increased from 50 percent to 91 percent. The increase was attributed to the ability to keep the mineral mining standards current by amending the mining regulations, which were most recently rewritten in 1989. The major causes of accidents and fatalities that are not addressed by law or regulation are inadequate task and hazard training, mobile equipment, and improper work practices. The law currently allows regulations to be promulgated to address mining conditions and practices, but not training and work practices.

A similar analysis of data pertaining to the coal mining industry cited figures from the U.S. Bureau of Mines that 73 percent of mining injuries are due to human error. Slightly more than half (52 percent) of the coal mining injuries and fatalities analyzed between 1988 and 1992 were due to causes addressed by the Mine Safety Law. Of the incidents attributed to causes addressed by current laws, 58 percent involved mine conditions and 42 percent involved mining practices. Of the 48 percent of coal mining accidents and fatalities for which the cause was not addressed by current law, the three most common causes involved haulage, equipment operation and maintenance, and walkways and travelways.

The variance between the percentage of accidents and fatalities in mineral mining that are addressed by law or regulation (75 percent) and the corresponding figure for coal mining (52 percent) may be due in part to the department's statutory inability to promulgate regulations addressing specific coal mine safety standards that are already addressed in the law. The department has greater flexibility with regulations involving mineral mining conditions and practices by virtue of section 45.1-33 of the Mine Safety Law.

Criminal Prosecutions

A report by the department on the number of criminal charges filed under the Virginia Mine Safety Law between 1988 and 1992 revealed 34 misdemeanor charges filed alleging violations of coal mining safety laws and more than 24,000 violation notices for unsafe mining practices issued by coal mine inspectors. One barrier to criminal prosecutions is the requirement that a violation of a safety standard be "willful." In addition, the violation must have been on the part of a mine operator or his agent. The local Commonwealth's Attorney is responsible for deciding whether to prosecute a state mining law violation. Often state misdemeanor charges are not pursued by the local prosecutor if federal authorities institute an action for a violation of the federal mine safety program.

Discussion of Policy Issues

The balance of the subcommittee's efforts will focus on deciding the course of the Commonwealth's policy on mine safety issues. Among the policy issues scheduled for discussion at future meetings are the general scope and structure of the law, the roles of boards and the department, program enforcement, and technical standards. Decision briefs will be presented, outlining the benefits and drawbacks of options for each issue.

The first decision brief presented to the subcommittee asked whether all segments of the mining industry should be regulated by one comprehensive mine safety law, or by providing separate parts of a mining law to address the different types of mining in Virginia. The decision brief noted that the current mix of statutory provisions governing underground and surface mining and coal and mineral mining is not clear, and there is considerable room for conflicting interpretations. After a discussion of the options, the subcommittee unanimously endorsed the establishment of four sets of standards, one each for underground coal mines, surface coal mines, underground mineral mines, and surface mineral mines. This option was perceived as being most responsive to the needs of varying constituencies, providing clear standards, and eliminating possible cross-over effects.

The subcommittee will hold public hearings in Norton, Richlands, and Richmond on August 17, 18, and 30, respectively. Business meetings have been scheduled for August 17, August 30, September 29, October 27, and November 23. Another meeting will be held December.

The Honorable Alson H. Smith, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 494: Joint Subcommittee on Privatization of Solid Waste Management

June 22, 1993, Richmond

During its first meeting, the joint subcommittee heard reports on a recently completed survey of tipping fees and recycling and the concerns of municipalities and counties.

Tipping Fee and Recycling Survey

Mary Burton of Draper Aden Associates summarized the results of a tipping fee survey and recycling report conducted by

her organization. The survey was mailed to over one thousand municipalities in Virginia, Maryland, North Carolina, South Carolina, Tennessee, Georgia, Florida and Alabama. The responses indicate:

- tipping fees range from a low of $10 to a high of $70 per ton in Virginia, with an average of $32, compared to an average of $28 for the eight-state region;
- only 7% of Virginia localities rely solely on tipping fees to pay for the cost of their solid waste operations, 59% on a combination of tipping fees and government funds, and 34% solely on local government funds;
- 33% of the landfills in Virginia were reported to be lined, compared to 25% in the region; 44% have leachate collection systems, compared to 30% in the region; and 86% monitor their ground water, compared to 79% in the region; and
- Ninety percent of Virginia respondents indicated that they had recycling programs, which accounted for about 16% of the waste stream and rank Virginia in the top three in the region for recycling. Most municipalities responding to the survey utilize source separation, with only a handful utilizing material recovery facilities.

Draper Aden will conduct a similar survey next year, with the possible inclusion of questions from the subcommittee.

Municipal Views and Experiences

The solid waste management market in the United States is a $30 billion a year industry, consisting of about 30% publicly held companies, 45% municipal/government, and 25% local/regional independents. Eleven major publicly held companies, accounting for approximately 30% of the market share, have experienced tremendous growth in all sectors of waste management, decreasing the ability of smaller companies to compete. The cost to manage waste has increased and will continue to increase due to the difficulty and cost associated with siting facilities and increasingly stringent federal and state regulations.

While the concept of privatization of waste management has become attractive to many elected officials, numerous local governments have returned to publicly operated collection after finding that it is less expensive. Many have found that it is necessary to continue their involvement in the area in order to maintain competition.

Several examples of failed privatization were provided, including the Towns of Dumfries, Herndon, and West Point and the Cities of Richmond, Suffolk, and Charlottesville.

It was suggested that if full cost accounting is to take place it should be done on an equitable basis by both the private and public sectors so that a true picture of relative costs and benefits could be produced. This would also avoid a situation that has occurred in other areas where large waste management companies have deliberately underbid costs so as to get contracts, drive out competition, and then raise prices. Cost reporting should streamline and standardize existing local governmental accounting procedures, without burdening localities with increased paperwork.

It was suggested that the committee should include prudent guidelines and careful instructions on how the Commonwealth will (i) avoid private monopolies for solid waste management services, (ii) not burden local jurisdictions with mandates and costly reporting requirements, and (iii) provide for long-range economic understanding of privatization.

Privatization of solid waste management has seen success where there is an appropriate level of public sector oversight. Without proper performance evaluation and contract monitoring, privatizing can result in higher costs. Seven suggestions for local governments were then presented:

1. In inflationary periods, a reasonable contract should include an escalation clause that increases compensation in accordance with an index that fits the local economy.
2. A local government should consider including a contract provision that allows the jurisdiction to step in and take over operation and equipment in the event of default by the contractor.
3. A jurisdiction must employ competent contract inspectors and administrators. Local government officials should realize that experienced field supervisors do not always make good contract administrators and inspectors.
4. For bid specifications, which are critical, the local government should obtain input from supervisors, employees, and contractors.
5. A contract should include specific penalties so that it becomes more costly for the contractor not to fulfill specifications than to fulfill them.
6. Contract monitoring is the key to contracting a service successfully. A local government should train inspectors for their role as contract monitors.
7. A local government should be active in dealing with competitive jurisdiction functions, such as productivity committees and employee suggestion programs.

Virginia Association of Counties

Many landfills will be closing due to increased state and federal regulation. Forty-eight counties have submitted permit requests for new facilities that will meet new design requirements. The per-acre cost of land-filling has increased from approximately $60,000 a few years ago to approximately $300,000 today. Last year the Department of Waste Management estimated that it will cost local governments approximately $1.8 billion over the next 20 years to comply with current waste management mandates. As a result, a growing number of jurisdictions are acting together in order to develop facilities and deal with the increased capital cost associated with solid waste management. In attempting to develop waste management facilities local officials have the following choices, none of which is risk free:

1. Ship waste elsewhere and worry later about future costs and unforeseen consequences over which the locality will have little control.
2. Within a locality, build a smaller state-of-the-art facility for

local waste only (costs may be prohibitive to most localities).
3. Give approval to a private company to build a large regional landfill which may profitably accept waste from areas outside the jurisdiction.
4. Become party to an agreement to provide waste management services on a multi-jurisdictional basis.

There are currently many decisions being made at the federal level that will affect the shape of solid waste management at the local level:
1. Whether EPA will extend the deadline for compliance with Subtitle D of the Resource Conservation and Recovery Act (RCRA) regulations for compliance with landfill design criteria due to go into effect October 9, 1993.
2. Whether the EPA will delay the local compliance deadline for financial assurance requirements from April 1994 to October 1995. The financial assurance issue will have an impact on localities' abilities to remain in the waste management business.
3. Whether Congress will allow states to restrict importation of out-of-state waste. Virginia currently has both importer and exporter localities.
4. When and if RCRA is reauthorized, what impact new provisions regarding minimum recycled content and additional mandates will have on solid waste management at the local level.

Other privatization issues need continued discussion, including (i) whether privatization will improve service and efficiency at an affordable cost, (ii) how many competitors should vie for solid waste business and should the public sector remain in the field as a competitor, (iii) how does a local government preserve its options if the private sector fails to perform up to standard, (iv) what penalty, if any, should be provided for in the case of inadequate performance, (v) how to determine the financial viability of the company proposing to do the work, and (vi) what options the locality has should the private solid waste company go bankrupt.

The Honorable Shirley F. Cooper, *Chairman*
Legislative Services contact: Shannon R. Varner

HJR 444: Select Committee Studying the Long-Range Financial Status of the Game Protection Fund

June 24, 1993, Richmond

During its previous three years of deliberations, the select committee examined ways to provide additional moneys to the Department of Game and Inland Fisheries (DGIF). At its initial meeting this year, the agenda included a discussion of (i) the findings and recommendations of the Auditor of Public Accounts' study of the management structure of DGIF and (ii) the agency's funding needs and the Board of Game and Inland Fisheries' plan for addressing these needs.

Auditor's Study

In 1992, the Auditor of Public Accounts was asked by a legislative subcommittee (HJR 191) to conduct a management study of DGIF. The study examined five general areas:
1. The statutory mandates set by the *Code of Virginia* and how the department has adopted these mandates in its mission statement and strategic plan;
2. Whether the department's organizational structure provides the means to deliver required services and measure program delivery;
3. If the internal staffing methods adequately allocate staffing between administrative and program functions for both the department and its divisions;
4. If the department's budgeting and accounting processes appropriately allocate resources and track their usage; and
5. Whether the board effectively communicates its policies and procedures.

The following is a summary of the auditor's findings and recommendations in each of these areas:

Statutory mandates

- The auditor found that DGIF follows *Code* mandates and that its activities fall within the agency's statutory mandates.
- Opportunities exist to consolidate programs that overlap with those of other agencies.
- The department lacks an evaluation system to measure the performance of its programs and activities. Such a system should be implemented.

Resource allocation

- Hunting licenses are generating $14 million, while the agency is expending only $10 million on wildlife activities, a significant portion of which is allocated for law enforcement.
- Boating is not generating sufficient funds to cover the costs of the services provided. For FY 1993 boat-related revenues are estimated to be $1.7 million, compared to $4.3 million in direct and indirect boating expenses, resulting in a $2.6 million shortfall. For the boating program to be self-sufficient, the fees for boat titling and registration would have to be significantly increased.
- The department should increase the subscription rates for the *Virginia Wildlife* magazine.

Organizational structure

- Management should consolidate activities related to the management of fish and wildlife species and their habitat into one division.
- The department should restructure the organization to better accomplish its mission and reflect its strategic plan.
- The General Assembly may wish to consolidate the natural heritage activities of the Departments of Game and Inland Fisheries, Agriculture and Consumer Affairs, and Conservation and Recreation and place the programs in DGIF.

Staffing methods

- The department does not have a method of determining staffing needs which takes into account the current and future

availability of funds. As a result, the department's maximum employment level and the number of established positions have increased without a concomitant increase in the agency's funding. Vacancies are, in most instances, due to a lack of funding.
■ The department should develop and implement a strategy to determine staffing allocations.

Information systems
■ The department does not properly plan and develop information systems. It does not have a long-range plan that envisions the future of the agency's information systems.
■ The department should adopt systems development standards. All systems should have proper documentation before they are placed into production.

Policies and procedures
■ The board should examine the appropriate role and purpose of law enforcement within the agency (i.e., strictly enforcement vs. broader role in wildlife management).
■ The board should formally address their expectations of the executive director.

Funding Options

To assist the select committee in formulating any funding proposals it may ultimately recommend to the General Assembly, officials of DGIF were invited to describe the agency's funding needs and what actions are being contemplated by the Board of Game and Inland Fisheries to meet these projected needs. Department officials expressed concern that, absent any increase in funding, such factors as inflation, the declining number of individuals purchasing licenses, and the demand for a wider variety of services will require the continued "downsizing" of the agency.

This situation is not unique to Virginia; game and wildlife agencies in other states face a similar situation. Some have been more successful than others in developing a range of funding sources. For instance, Missouri recently enacted legislation which dedicated a small percentage of the state's sales tax (less than 1%) to its wildlife agency. This was a significant factor in Missouri's having the highest per capita spending on wildlife programs ($16.97) of any state in the southeast region. Virginia, on the other hand, is ranked second lowest in per capita spending ($4.02), exceeding only Texas ($3.77), and last in its ability to find funding sources outside its traditional client base. Only 5% of DGIF's budget comes from sources other than user fees (licenses) and federal matching grants.

The goal of the Board of Game and Inland Fisheries is to fund wildlife programs at a level comparable to other states in the region. The agency's 1993 budget is $25 million, of which $23.7 million is allocated for operations and $1.3 million for capital outlay. Looking to the future, the board estimates that it will need an additional $35.5 million for operation and capital outlay over and above its current $25 million budget, or a total of $60.5 million, to adequately carry out its mission in the year 2003. In order to bring facilities up to standards by this date, the agency will need to institute a $40.3 million capital improvement program.

Currently, DGIF employs 373 individuals. By the year 2003, agency representatives estimate that an additional 244 persons will have to be employed, resulting in a total agency workforce of 617.

To meet these anticipated needs, the agency is considering several funding options, including: (i) the sales tax paid on boating equipment, (ii) a portion of the state's sales tax on wildlife-related equipment, (iii) the watercraft sales and use tax, (iv) proceeds from the lottery, (v) a portion of gasoline tax paid by boaters, (vi) a conservation stamp for wildlife habitat, (vii) a tax on land development projects, based on building permit value, (viii) voluntary donations to wildlife through utility bills, (ix) a tax on removal of minerals or water, (x) registration of all boats currently not registered, (xi) an increase in hunting and fishing license fees, (xii) a tax on non-returnable beverage containers, (xiii) an increase in the automobile registration fee, (xiv) a portion of the recordation tax, and (xv) a portion of the gasoline tax paid for gas used for lawnmowers.

Next Meeting

At its next meeting, tentatively scheduled for late August or early September, the committee will review the funding options recommended by the Board of Game and Inland Fisheries.

The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: Marty Farber

SJR 217: Joint Subcommittee on Campaign Finance Reform, Lobbying, and Ethics

Public Hearing, June 22, 1993, Richmond

Seventeen individuals and representatives of groups such as Common Cause and the League of Women Voters offered a variety of general and specific comments on the 37 recommendations made by the Governor's Commission on Campaign Finance Reform, Government, Accountability, and Ethics. A number of those recommendations were enacted into law in the 1993 Session, but most remain on the table for consideration by the joint subcommittee. The joint subcommittee held the Richmond hearing to gauge public support for various commission proposals as a preliminary step before its work sessions on the topics of campaign finance reform, lobbying, and ethics.

Several reforms were supported by six or more of the speakers:

- broadened disclosure requirements in the areas of campaign finance, lobbying, and/or personal financial interests,
- centralized and/or computer-accessible disclosure reports,
- campaign contribution limits (on individuals, PACs, or other groups), and
- an independent state ethics commission to oversee campaign finance, lobbying, and ethics laws.

Speakers generally supported one or more of the commission's proposals, but raised additional issues such as changes in the new lobbying disclosure form issued by the Secretary of the Commonwealth, enforcement of the Freedom of Information Act, reducing the number of scheduled elections (Virginia is one of few states with annual elections), and a tax credit incentive to increase voter turnout.

A number of speakers objected to some part of the commission's proposals including:
- raising the dollar level that triggers the requirement for identifying information on campaign contributors,
- expanding the lobbying disclosure requirements to cover executive branch agencies or public employees, and
- raising the dollar level that triggers lobbying disclosure requirements.

The joint subcommittee added these statements to the 67 made before the Governor's Commission for an extensive public comment record.

At the conclusion of the hearing, the joint subcommittee asked staff to invite the Secretary of the Commonwealth to its next meeting to review the changes made by his office in the lobbying disclosure form.

Work Session, July 15, 1993, Richmond

Current Disclosure Form

Scott Bates, Secretary of the Commonwealth, outlined the various changes in this year's lobbying disclosure form, including:
- a new schedule and requirement for listing the campaign contributions made by the principal or lobbyists on his behalf;
- expanded disclosure of "goodwill" expenses, such as expenses incurred by the lobbyist at social events; and
- several changes made to obtain more detailed information, such as the specific bill numbers for legislation of concern to the lobbyist and itemized miscellaneous lobbying expenses.

In response to members' questions, Mr. Bates stated that he had confirmed with the Attorney General's Office that he has statutory authority to design and modify the disclosure form. However, he had not asked the Attorney General's Office to review this year's revised form and changes to verify that the changed form complies with statutory lobbying disclosure requirements. Mr. Cranwell suggested that the secretary should review the form with the Attorney General's Office.

Mr. Bates also explained that the revisions he made were designed either to close loopholes in the disclosure requirements or to respond to requests by the public for information on campaign contributions.

The joint subcommittee raised several additional issues during its discussions with the secretary:
- whether there should be statutory changes to require the additional information covered in the revised disclosure forms,
- how the change to year-round disclosure affects the present registration and disclosure forms, and
- whether the disclosure requirements should apply to executive branch lobbying and to contributions to the Governor's campaign and inaugural funds.

Review of the Governor's Commission's Recommendations on Lobbying

The joint subcommittee next reviewed the specific recommendations of the Governor's Commission on lobbying. It flagged certain issues for further subcommittee review and discussed several issues at length. No formal actions were taken, but the members agreed, by consensus:
- to consider expanding lobbying to cover the Governor's actions on legislation;
- to examine alternatives to regulation of executive branch lobbying, such as prohibitions on informal, private communications between regulators and lobbyists in appropriate situations and, in any event, to approach this topic with caution in view of the variety of agency actions, from gathering information to formal rule-making procedures;
- to consider increasing the dollar level that triggers the legal requirements to register as a lobbyist and disclose lobbying expenses (suggestions ranged from the $500 level recommended in the commission report to $5,000);
- to consider attaching criminal penalties only to intentional violations of the lobbying regulation law and using civil penalties for noncompliance with the law (members expressed concern that volunteer lobbyists will be in violation of the law unknowingly);
- to examine further the controversial proposal to require public employees to comply with lobbying regulations, including (i) the repeal or revision of the present law prohibiting the employment of a lobbyist by state and local government agencies and (ii) the enactment of special provisions such as the disclosure of money spent to influence a legislator but not the costs of the public employee's salary or travel expenses;
- to allow the new requirement for year-round disclosure to operate before considering changes such as quarterly reports;
- to consider giving more than five days to register after lobbying activities begin — possibly two weeks or 30 days; and
- to review suggestions for expanded disclosure requirements.

The Honorable Joseph V. Gartlan, Jr., *Chairman*
Legislative Services contact: Mary R. Spain

SJR 249: Joint Subcommittee to Develop Criteria for Evaluating Sales Tax Exemption Requests

June 9, 1993, Richmond

In an effort to curtail the erosion of the Commonwealth's sales tax base, the General Assembly has enacted no new sales tax exemptions in its last two sessions. However, neither has it allowed any old exemptions to expire. Twenty sales tax exemptions scheduled to expire on July 1, 1993, were extended for one more year. The bulk of these exemptions involved nonprofit civic and community service organizations, exempt from income tax under I.R.C. § 501 (c)(3). At the same time, 64 sales tax exemption bills (many of them duplicative) died in the Senate and House Finance Committees. Most of these bills dealt with § 501 (c)(3) organizations, some of which could be considered indistinguishable from other organizations granted sales tax exempt status under Title 58.1. Consequently, the 1993 General Assembly enacted SJR 249 "to study factors and criteria which should be used by the General Assembly in evaluating requests for exemption from the retail sales and use tax."

At the subcommittee's organizational meeting, staff provided an overview of the proliferation of sales tax exemptions from the original 21 enacted in 1966 to the 118 that now exist. The largest number of new exemptions, and the biggest category of exemptions, is the nonprofit civic and community service area; however, of the categories studied by the Department of Taxation, the nonprofit exemptions category is the least costly in terms of revenue impact on the state treasury.

Since the 1989 Session of the General Assembly, the legislature has placed expiration dates on new sales tax exemptions. Pre-1989 exemptions, however, have not been treated similarly and remain "permanent." Therefore, in effect, Virginia now maintains a dual policy with regard to nonprofits. No policy basis, other than date of enactment, has been articulated for this difference in treatment.

Laws of Other States

A review of the sales tax exemptions of the six jurisdictions surrounding Virginia (Maryland, North Carolina, Tennessee, West Virginia, Kentucky, and the District of Columbia) showed that these jurisdictions have a much broader exemption covering the general class of nonprofit organizations, either by cross reference to I.R.C. § 501 (c)(3) or by exempting a nearly identical list of organizations. To the extent such exemptions may be limited, the limitations relate to requirements of carrying on the organization's exempt activities within the exempting state. North Carolina has adopted a procedure by which many nonprofits are required to pay sales tax at the time of purchase and then submit requests for refund on a quarterly, semiannual, or annual basis, depending upon the nature of the nonprofit. However, the North Carolina nonprofit exemption is still broader than Virginia's even though certain nonprofits must overcome various procedural hurdles to receive its benefit.

Proposed Pollution Prevention Exemption

Virginia already provides a sales tax exemption for certified pollution control equipment and facilities. However, the exemption does not include pollution prevention equipment. The focus of environmental efforts in the 1990s is to prevent pollution in the first place so that pollution control is not required. Unfortunately, Virginia's current sales tax exemption provides tax relief for pollution **control** efforts only; no similar tax break is provided for pollution **prevention**. SB 570 (1993) was intended to change that situation, to "level the playing field" in the words of its advocates. The Senate Finance Committee requested that this joint subcommittee consider the policy implications involved in such an approach.

Staff noted that the concept of pollution prevention, although embraced by the private sector and regulator alike, was not susceptible to easy definition for purposes of statutory drafting. The methods and technology are constantly evolving, and the equipment generally cannot be purchased "off-the-shelf." Obtaining "measurable"' improvements in the environment can be difficult, resulting, at least in terms of SB 570, in broad parameters in the legislation and leaving much to the respective environmental boards to put into regulations.

Issues raised by the subcommittee included the following: (i) if both industry and government agree that pollution prevention is a technique superior to pollution control, why not simply require its use? and (ii) SB 570 (1993) was written in extremely broad terms, seemingly opening the door to a significant loss of tax revenues to the state treasury. The finance committees cannot make a reasoned determination if the Department of Taxation cannot furnish them with a fairly concrete fiscal impact, and the fiscal impact cannot be determined unless the statute is drawn with more specificity. Furthermore, if the environmental agencies cannot assure the legislature that measurable improvement in environmental quality will result, the revenue loss may be deemed too substantial to justify the granting of the exemption. Staff advised the subcommittee that there was no current requirement for planning and implementing pollution prevention technology; that to this point, the efforts had been voluntary. A proposal to couple a mandate with tax breaks (SJR 103) failed in subcommittee deliberations prior to the 1993 Session of the General Assembly.

Conclusion

Staff was directed to prepare draft legislation to accommodate the following policy concerns:

- convert the exemption application process into a system administered by the Department of Taxation, which will issue its rulings based on criteria established by the General Assembly;

■ any such system should not unduly burden the Department of Taxation or the taxpayer;
■ in considering the criteria for exempt status, it should be noted that in some areas, nonprofits compete with for-profit businesses. The policy implications of extending a sales tax exemption to the one, and not to the other, must be accounted for in some rational way in any statutory scheme.

The subcommittee anticipates holding two more meetings, the first scheduled for Thursday, September 16, 1993, at 11:00 a.m. in Senate Room B of the General Assembly Building in Richmond.

The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: John G. MacConnell

HJR 428: Joint Subcommittee Studying Increased Mortality and Cancer Rates Among Firefighters in the Commonwealth

July 8, 1993, Richmond

Established in 1992 by HJR 47 and continued in 1993 by HJR 428, the joint subcommittee met to examine the potential impact of extending presumptive workers' compensation coverage for cancer in firefighters.

Workers' Compensation

While localities are statutorily required to provide compensation for any firefighter disabled due to job duties, the most familiar relief program remains workers' compensation. Under current Virginia law, firefighters seeking recovery under workers' compensation may pursue one of two avenues. First, by showing an injury or occupational disease "arising out of and in the course of employment," claimants must satisfy a number of tests directly linking an occupational disease to the employment. Second, the claimant may receive compensation for "an ordinary disease of life" if there is clear and convincing evidence, to a reasonable medical certainty, that the disease arose out of and in the course of employment, did not result from causes outside employment, and followed as an incident of occupational disease. Medical evidence is critical to establish the requisite causative link between the claimed disability and the work environment. The challenge of proving causation is often difficult, however, due to the various interpretations scientists, doctors, and jurists may attach to the term.

Statutory Presumption

The claimant need not always carry the burden of proving this causal relationship. In Virginia, salaried and volunteer firefighters suffering from heart or respiratory disease or hypertension are presumed to have contracted these conditions from the workplace for purposes of obtaining workers' compensation. This presumption may be rebutted by the employer "by a preponderance of competent evidence." The employer must establish a non-work-related cause even where there is evidence of predisposing factors; a finding of compensability may nonetheless be upheld. In 1992, 75 heart/lung awards were entered for police and firefighters; compensation costs exceeded $5 million. Treatment and sick leave for cancer would likely differ from other occupational diseases, and separate statistical data will be necessary to detail cancer claims.

Currently, 14 states have broadened presumptive coverage statutes to include not only heart and lung disease among firefighters, but also cancer. Coverage under these statutes is often contingent upon a showing that the cancer is of a kind resulting from exposure to a known or suspected carcinogen. In continuing its study in 1993, the joint subcommittee expects to examine more closely the impact of these presumptive cancer statutes in other states.

Maryland Statute

The Maryland presumptive cancer statute was enacted over 10 years ago. There have been no firefighter cancer claims advanced under the statutory presumption since mid-1983, perhaps due to the superior education and training firefighters now receive and efforts by firefighters to prevent exposure to hazardous substances. Under the Maryland presumption, the disabled firefighter must have completed five years of service and suffer from leukemia or pancreatic, prostate, rectal, or throat cancer. The Maryland legislature gathered little empirical data regarding cancer and firefighters when it enacted the statute, and the specified cancers are among those believed to be caused by absorption of carcinogens through the skin, rather than through the lungs.

Fiscal Impact

Staff indicated that most localities support workers compensation through local self-insurance trust funds or private third party carriers. Experience and further actuarial studies would be necessary to quantify the potential fiscal impact of a presumptive cancer statute, but a single cancer claim could have a significant effect on the insurance premium or insurance pool of a single locality. Municipalities, as the primary employer of firefighters, would bear the costs of any increased claims arising from a presumptive cancer law in Virginia; the costs to the Commonwealth would be incidental.

The subcommittee expects to review additional cancer claims data from other states at its next meeting.

The Honorable Robert B. Ball, Sr., *Chairman*
Legislative Services contact: Kathleen G. Harris

HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

July 20, 1993, Richmond

With the assistance of Overnite Transportation Company, the Science Museum of Virginia, and Virginia Power, the subcommittee was briefed on, inspected, and shown practical demonstrations of a tractor truck powered by liquified natural gas (LNG) and passenger vehicles powered by electricity. The subcommittee was also briefed on recent developments in the use of propane-powered vehicles and improvements to the compressed natural gas fueling stations at the Suffolk District Headquarters of the Department of Transportation.

LNG Truck

The LNG tractor truck is being used by Overnite in local delivery service in the Richmond area in order to determine the desirability, feasibility, and general practicality of using this sort of vehicle in its business. Use of liquified (rather than compressed) natural gas affords the vehicle a greater range. However, unlike compressed natural gas, LNG must be kept at a temperature of minus 260° Fahrenheit. In its present configuration, Overnite's LNG vehicle has a range of 400 to 450 miles. Overnite's representatives also touched briefly on the experimental use of LNG-powered locomotives by the Union Pacific Railroad.

Electric Cars

Jim Robb of the Virginia Science Museum and David Roop of Virginia Power briefed the subcommittee on advances in the development of practical electric-powered vehicles. Mr. Robb pointed out that the museum's electric station wagon is very nearly a zero-pollution vehicle: not only is it battery powered, but its batteries are recharged largely by means of solar panels. Both Mr. Robb and Mr. Roop commented that, in recent years, electric vehicle technology has developed much more quickly than had been expected. Mr. Roop expected that electric vehicles would be available to consumers within 18 months at prices very similar to the prices of similar gasoline-powered vehicles. In the near term at least, electric vehicles will probably be used mostly in certain delivery fleets, as families' "second commuter vehicle," and possibly for ground-side transportation at airports. Both speakers felt that, for electric vehicles to gain acceptance, more public education on the economic and environmental benefits of these vehicles would be needed, along with tax deductions, credits, or similar financial incentives. The subcommittee's next meeting will be at 11:00 a.m. on September 8 in Springfield.

The Honorable Arthur R. Giesen, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold

SJR 201: Joint Subcommittee Studying Measures to Reduce Emissions from Coal-Carrying Railroad Cars

July 9, 1993, Salem

Convening its initial meeting of the 1993 interim, the joint subcommittee held a public hearing in Salem to solicit testimony from citizens affected by coal dust emissions. The panel also heard from officials of Norfolk Southern Corporation, as well as government and business representatives from Altavista.

Background

Legislation presented to the 1991 Session served as the study's catalyst. SB 566 and HB 1163 were identical measures that would have required railroad cars transporting coal to be covered so that their contents would not escape. Authorized to study issues presented by the legislation by the chairmen of the Senate Commerce and Labor and the House Roads and Internal Navigation Committees, the special subcommittee was reconstituted as a joint subcommittee in 1992 (SJR 1).

The subcommittee recommended that the General Assembly continue its work for another year so that it could monitor progress and review results of a study being conducted by Norfolk Southern Corporation (NS). Completion of the study—intended to determine the nature of the fugitive coal dust problem and to propose potential solutions—had been delayed until this year. SJR 201 was subsequently adopted by the 1993 General Assembly.

Norfolk Southern Study

A major component of the NS study involves a prototype computer-controlled system that sprays coal cars with water. The subcommittee viewed a video of the rail company's recently completed "test water spray facility." Operational since late May and located in Giles County, the system sprays loaded coal cars with water when a dispatcher in Roanoke notifies the engineer that it is appropriate to do so. The engineer must guide the train through the facility at 5 mph. Computers and sensors activate the system; it may also be deactivated if there are any problems.

Each car is sprayed with 30 gallons of water from two stations that have the capacity to spray 300 gallons per minute. Excess water is collected in fiberglass retention ponds located under the track; company representatives testified that the system minimizes overspray and water waste. After spraying, the computer collects information and generates reports that are sent by modem to Norfolk Southern's main offices.

One of the project's goals is to evaluate the spray facility's

effectiveness in controlling fugitive coal dust. Under extreme meteorological conditions with particular types of coal, as much as 500 lbs. of coal can escape from each car during the 400-mile trip from the coal mines to the eastern port. The company's consultant is also conducting laboratory experiments to study how atmospheric conditions and the type of coal transported affect emissions.

The NS financial outlay to the project thus far is approximately $1 million. The study's budget is scheduled to expire at the end of this year, and results of the study will be provided to the subcommittee prior to the next legislative session. A company representative told the panel that NS hopes to be in position to "make a convincing argument for a self-imposed control strategy."

Follow-up

At the joint subcommittee's November 1992 meeting, members asked Norfolk Southern to go forward with a permitting process so that the company would be allowed to spray the coal with a crusting agent in the event that water was found not to be an effective control technique. Permission to spray the coal with a chemical crusting agent has been granted, and plans to conduct such an experiment are underway.

In addition, in response to the subcommittee's recommendation that a citizen reporting component be incorporated into the study, company representatives informed the panel that a toll-free telephone number (800-621-0772) has been established for citizens to report incidents of coal dust emissions.

Continued Concerns

Acknowledging improvement in recent weeks, Altavista town manager Stan Goldsmith told the subcommittee that his recent discussions with local residents and businesses located along Route 29 indicated that coal dust emissions are a continuing problem.

The health and safety manager for an Altavista employer narrated a videotape produced by the company's security camera, showing incidents of coal dust emissions which occurred in late June and early July. He noted that the dust partially concealed the train, as well as vehicles traveling on Route 29. Particularly bad episodes, he said, have forced some vehicles to turn on headlights or pull off of the road. Continuous cleaning of the company's facility and roof is its major concern with regard to fugitive coal dust.

Subcommittee members also heard from area citizens who testified that coal dust emissions continue to disrupt their lives. Pictures, materials and coal dust samples provided to subcommittee members illustrated some of the problems encountered by residents who live along the tracks. Houses and cars need repeated washing, windows and doors stay closed, and outdoor activity is curtailed because of the coal dust. Many citizens doubted that spraying coal cars with water will help to abate the problem. Some speakers also expressed concern about the unknown health effects of their exposure to coal emissions.

Next Meeting

Citing numerous complaints of fugitive coal dust coming from coal piers in the Tidewater area, Chairman Schewel announced that the subcommittee would next hold a public hearing in the Hampton Roads area.

The Honorable Elliot S. Schewel, *Chairman*
Legislative Services contact: Mark C. Pratt

SJR 207: Joint Subcommittee Studying Pollution Prevention

July 21, 1993, Richmond

The joint subcommittee established by SJR 103 in 1992 was continued by the 1993 Session (SJR 207). At its January 1993 meeting, the subcommittee endorsed legislation establishing a pollution prevention program (enacted by the General Assembly) and creating tax exemptions for certain pollution prevention facilities and equipment (not reported out of the Senate Finance Committee). Several of the developments in pollution prevention since the adjournment of the 1993 Session include:

■ **EPA Grant Approval.** The Environmental Protection Agency has given preliminary approval to a $311,600 grant to the Commonwealth under the Pollution Prevention Incentives for States program. Under this competitive matching grant program, Virginia will be required to provide 50 percent of the funds. Accordingly, the money to be provided by the federal government upon final approval by the EPA's Region III Administrator is $155,800. The money will be used over a two-year period to establish a statewide pollution prevention infrastructure at all levels of government and to fund multimedia pollution prevention outreach for Virginia industries via innovative communications techniques.

■ **1991 Toxics Release Inventory (TRI) Data.** Figures for the fifth year of TRI reporting were released in May. The 1991 figures are important both for their data on transfers and releases of toxic chemicals by industries required to file the reports under SARA Title III and for the additional information required for the first time under the federal Pollution Prevention Act of 1990. This law required facilities to include a Toxic Chemical Source Reduction and Recycling Report, containing information on the amounts of toxic chemicals that are recycled, source reduction practices used with toxic chemicals, and techniques used to identify source reduction opportunities. Nationally, 37 percent of facilities reported undertaking source reduction activities, such as equipment modifications, reformulation of products, raw materials substitution, and operational improvements. The 1991 TRI data for Virginia revealed that 35.5 percent of facilities

required to file reports have undertaken source reduction efforts for one or more of the reported chemicals. Virginia's TRI figures show that 97.6 million pounds of toxics were released or transferred off-site for treatment or disposal in 1991, an eight percent decrease from the previous year.

■ **Federal Clean Water Act Reauthorization Bill.** Senate Bill 1114, introduced in Congress on June 15, will have a major impact on pollution prevention in the Commonwealth. Four aspects of this reauthorization of the Clean Water Act that will be monitored would (i) require certain applicants for an NPDES permit to submit a pollution prevention plan for the facility which establishes goals for the reduction and use of pollutants and by-product generation; (ii) direct the EPA to consider multimedia and pollution prevention concerns when writing industrial effluent guidelines; (iii) require the EPA to phase out the use of some "highly toxic or bioaccumulative" substances; and (iv) give EPA authority to "mandate source reduction, including plant-process changes."

■ **EPA Policy Statement.** On June 15, Administrator Carol Browner issued a policy statement embracing the agency's new focus on pollution prevention while challenging it "to go further" and "build pollution prevention into the very framework of our mission to protect human health and the environment." Objectives of the agency under the Clinton administration include strengthening the network of state and local pollution prevention programs, integrating source reduction into regulatory, permitting and inspection programs, building partnerships with the private sector, and looking for new pollution prevention technologies that increase competitiveness and enhance environmental stewardship. Concrete actions taken thus far include requesting that the EPA's budget include a $33 million increase for pollution prevention programs.

■ **Executive Order on Pollution Prevention.** In a speech presented on Earth Day, President Clinton announced his intent to issue an order addressing pollution prevention. According to the EPA's Eric Schaeffer, the president is expected to sign the executive order by the end of July. The order is likely to require that all federal agencies file TRI reports revealing their releases and transfers of toxic chemicals and to establish a goal of a 50 percent reduction in the releases of toxic chemicals by federal agencies by 1999. The executive order is also expected to require an overhaul of federal procurement practices in order to reduce the use of toxics by the federal government.

Private Sector Initiatives

The Virginia Chamber of Commerce and the Virginia Manufacturers Association reported to the subcommittee on their implementation of pollution prevention programs. The chamber is developing a program in cooperation with the Institute for Cooperation in Environmental Management (ICEM) and other segments of the business community. ICEM, a non-profit organization based in Philadelphia, and the chamber have applied for a grant from the EPA to establish a program in the Commonwealth to provide, at no cost to businesses, trained engineers who will consult with selected businesses to assist them in identifying and implementing pollution prevention opportunities. The engineers, retirees or other volunteers participating on a part-time basis, will attend a program at the University of Tennessee to prepare them for their tasks.

During its first year, the program will select 12 to 15 small or medium-sized businesses around the state that are generating appreciable amounts of pollution but lack the resources to institute a reduction program. The chamber's involvement will include providing office space, making information about the program available throughout the state, selecting businesses that would benefit from the program's services, and assisting ICEM, which has experience with an identical program in the Delaware Valley, secure a reliable funding source. If EPA approves the funding request, implementation of the program should begin early next year.

The Virginia Manufacturers Association (VMA) is working on a project to expand pollution prevention in the Commonwealth. The VMA, in conjunction with Ron Erchul of Virginia Military Institute, is developing an outreach program involving a videotape covering the benefits of pollution prevention and basic "how-to" information on the conduct of environmental audits. VMA counsel reported that the groups are also planning a manual to be used as the cornerstone for a training session. The subcommittee may be asked to help coordinate private sector efforts in expanding pollution prevention.

Economic Incentives for Pollution Prevention

Senate Bill 570, recommended by the subcommittee and introduced in the 1993 Session, is being studied this summer by a joint subcommittee of the Senate and House Finance Committees charged with developing criteria for evaluating sales tax exemption requests pursuant to SJR 249. The bill would expand the existing sales tax exemption for certified pollution control facilities and equipment to include those certified by an environmental board as materially reducing the amount of pollution released into any waste stream and materially reducing the hazards to public health or the environment.

Staff to the SJR 249 subcommittee described two features of SB 570 that concerned its members. First, the potential breadth of the tax exemption may open the door to substantial losses of revenues for the Commonwealth. The Department of Taxation was unable to ascertain the impact of the proposed exemption on the general fund, the Transportation Trust Fund, and local revenues because the definition of "certified pollution control equipment and facilities" is unclear. The impact was described as "negative" and "certain to be significant." The cost to the treasury of the existing exemption for pollution control equipment is estimated to be $14 million annually. Without assurances that revenue reductions will be offset by measurable improvement in environmental quality, the finance committees are unlikely to endorse an expansion of the exemption.

Second, the definition of "certified pollution control equipment and facilities" is contained in a section of the tax code creating an optional local property tax exemption. Article X, section 6 of the Virginia Constitution allows property tax

exemptions to be granted for equipment used "primarily" (which has been interpreted to mean more than 50 percent) for pollution abatement or prevention. SB 570 would grant a sales tax exemption, and permit localities to grant a property tax exemption, for facilities and equipment which "materially" reduce pollution. Staff questioned the necessity of creating the optional local property tax exemption and noted that only one locality had exercised this option for pollution control devices.

Staff warned the subcommittee that endorsement of any new tax exemption bill would be difficult given projections of a revenue shortfall of between $700 million and $1.2 billion. However, several suggestions were offered to make a tax incentive bill more palatable to the finance committees. These included crafting the incentive as an income tax exemption or credit with a cap on the maximum amount that may be claimed; coupling a tax break with measurable waste reductions or mandated activities; and clarifying the processes used by the environmental boards in making eligibility certifications to the Department of Taxation.

Nonindustrial Pollution Prevention

In its first year, the pollution prevention subcommittee chose to focus its attention on industrial pollution prevention. As members became aware of opportunities for pollution prevention in other areas of the economy, they elected to postpone their examination until the study's second year.

Staff identified several sectors of the economy where opportunities for pollution prevention exist and other state or local governments have taken action:

- **Agriculture**. The use of pesticides and fertilizers may be reduced through programs stressing integrated pest management and low input sustainable agriculture.
- **Energy**. Reducing energy consumption may advance pollution prevention by reducing emissions generated by the consumption of fossil fuels.
- **Transportation**. By influencing air pollution generated by automobiles, transportation policies can prevent pollution. Mobile sources contribute as much as 70 percent of the carbon monoxide, 45 percent of the nitrogen oxides, and 34 percent of the hydrocarbons emitted into the air.

Pollution prevention opportunities have also been identified in such sectors as consumer products, state and local government, and mining. In addition to examining nonindustrial opportunities to expand pollution prevention, however, the subcommittee may revisit several issues raised during the initial year of the study, including facility planning, economic incentives, and the definition of environmental wastes.

The subcommittee will hold its next meeting during the second week of September in Richmond.

The Honorable R. Edward Houck, *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 532: Joint Subcommittee to Study the Electoral Process

July 15, 1993, Falls Church
July 22, 1993, Norfolk

The subcommittee opened its series of public hearings with a variety of speakers, including representatives from the League of Women Voters, researchers from several national institutes studying the electoral process, general and deputy registrars, members of local electoral boards, poll watchers, and private citizens. These speakers suggested that in order to promote political involvement, structural barriers to registration and voting must be removed and voter information must be increased to reach those persons currently alienated from the system.

Voter Turnout in Virginia

In the 1992 election, Virginia voter turnout reached a historically high level; however, only 52.8 percent of the eligible voters voted and only 63 percent of the voting age population was registered. State Board of Elections Secretary Michael Brown cautioned the subcommittee that these statistics may be misleading, because the voting age population in Virginia includes a number of ineligible voters, such as students and military personnel registered in other states, and also includes persons who have been adjudicated incompetent or convicted of a felony. Even considering these adjustments, Mr. Brown agreed that voter registration and participation could be improved.

Motor Voter

Most of the speakers urged the subcommittee to concentrate on developing methods and legislation for implementing the National Registration Act of 1993 for state and local elections. The act, known as "Motor Voter," was enacted on May 20 and expands federal voter registration in three specified ways to encourage voter registration and remove discriminatory and unfair obstacles. States are required to provide:

- simultaneous application for driver's license and voter registration,
- mail application for voter registration, and
- application in person at designated government agencies, including public assistance agencies, agencies that provide services to people with disabilities, and recruitment offices of the armed services.

States are encouraged to designate other locations as voter registration agencies, including public libraries, public schools, fishing and hunting license bureaus, government revenue offices, and other offices that provide services to people with disabilities. The federal act also prohibits removal of a voter's name for failure to vote and provides certain notice and removal procedures to protect registered voters who have moved within the same congressional district.

Although the federal law only reaches federal elections, Virginia must pass legislation to make the provisions of the act applicable to its state and local elections to avoid maintaining two registration systems, an expensive and administratively cumbersome option.

HJR 395

In anticipation of the passage of the National Voter Registration Act, the General Assembly passed at its 1993 regular session HJR 395, which provides for a constitutional amendment to remove provisions requiring (i) in-person registration and (ii) the automatic removal of registered voters for not voting. These changes are necessary if Virginia is to comply with the act. To become effective, the resolution must be passed a second time at the next regular session of the General Assembly and then submitted to the voters in November of 1994 for final approval. If approved, the provisions would be in place for the General Assembly elections in 1995.

Most speakers admitted that they had just begun to look at the implications of the Motor Voter law and were not prepared to make specific recommendations on how to implement the act. However, a few general comments were made, such as the need to combine the DMV application and voter registration in one form and to computerize the NCOA (National Change of Address Form). Speakers also suggested assembling a task force, comprised of citizen advocacy groups, registrars, and legislative and State Board of Elections staff to prepare drafts of enabling legislation necessary for implementing the act.

Rekindling Voter Participation

Several speakers suggested other reform measures to increase voter participation, including:

- Adopting a **no-reason absentee ballot** system. Currently a voter must state a reason (listed in § 24.1-227) before receiving and voting an absentee ballot.
- Moving the **registration deadline** closer to the day of the election. Recommendations for the deadline ranged from 10 days before the election to election day.
- Extending the **polling hours** and increasing the number of **polling locations**, particularly to accommodate voters in urban areas who have difficulty in getting to the polls. Extending the hours in the evening by one or two hours was suggested(polls are currently open from 6:00 a.m. to 7:00 p.m.).
- Adopting a **proportional system** of assigning the state's presidential electors for the electoral college in order to reflect each candidate's percentage of the popular vote.
- Establishing an **early voting system** such as the one used in Texas. The League of Women Voters informed the subcommittee that they had just approved a two-year study on the applicability of the Texas system to Virginia. Other speakers recommended modifying the Texas system to reduce the period for early voting from 20 days to 14 or 7 as a means to promote informed voting.
- Enhancing **voter education** by providing voting information announcements, candidate and issue pamphlets, voting records of members, and additional registration opportunities and civic programs in schools and prisons.
- Bringing elections closer to the people by requiring that all nominations for party candidates be by **direct primary** election and extending to voters the right of referendum and initiative.
- Opening opportunities for **mail ballots** (one reservation was made regarding the cost of mailing ballots to the voters).
- **Extending the ballot** to registered voters who have moved within Virginia and have not notified the registrar. Such persons would be allowed to vote by a special ballot for President, Governor, Lieutenant Governor, and Attorney General.
- Expanding the sources from which prospective **jury lists** are derived, such as personal property tax records, lists of recipients of various government benefits, and income tax payers. Many citizens refuse to register to vote because they know registration lists are used to select jurors.

A number of changes were also suggested to streamline and facilitate election administration, including procedures to alleviate waiting at the polls, electronic transmission of election materials for military and overseas voters, and expanding and defining the responsibilities of registrars, assistant registrars, and local electoral board members.

Next Meeting

The joint subcommittee will continue its regional public hearings in Abingdon on August 27 (rescheduled from August 5) and in Richmond on September 8.

The Honorable James M. Scott, *Chairman*
Legislative Services contact: Ginny Edwards

Coal and Energy Commission

June 28, 1993, Richmond

At its first meeting of the year, the Virginia Coal and Energy Commission received reports on renewable and alternative energy sources, the funding of energy programs, and the status of Virginia's coal industry. The commission was also presented with a range of actions the Commonwealth may take in response to the Energy Policy Act of 1992.

Commercialization of Energy Sources

One of the two goals of the Virginia Energy Plan, announced by Governor Wilder in August 1991, is to advance renewable and alternative energy sources in the Commonwealth. The establishment of the Solar Photovoltaic Manufacturing Incentive Grant Fund by the 1993 Session of the General Assembly is an example of actions Virginia can take to acceler-

ate the commercialization of renewable and alternative sources of energy. This incentive program is credited with luring a $30 million solar photovoltaic cell plant to Newport News. The plant, which will provide 450 jobs by 1998, will build panels that convert sunlight into electricity.

In furtherance of the energy plan's goal, the Department of Mines, Minerals and Energy will oversee a study of barriers to the use, availability, and acceptance of renewable energy sources and alternative transportation fuels in order to accelerate their commercialization. The department plans to award a contract for the study by August. The contractor will prepare a draft report discussing legislation to remove policy and statutory barriers by November 15, 1993. The draft report will be presented to the commission at a fall meeting, with the final report due in June 1994.

Funding for Energy Efficiency Programs

The largest source of funding for the Commonwealth's energy programs since 1986 has been federal oil overcharge funds. Reliance on this source is such that the department's Division of Energy has not received any general funds from the Commonwealth, other than annual dues for the Southern States Energy Board of $38,000, since 1986. Of the division's $2.5 million budget, $2.2 million is from oil overcharge funds and $300,000 is from federal grants.

The division does not expect to receive any further oil overcharge moneys. A report on financing mechanisms for energy programs in 13 other states showed that six of the states surveyed (Delaware, Florida, Georgia, North Carolina, South Carolina, and West Virginia) have not adopted alternative funding mechanisms. Financing alternatives implemented in other jurisdictions include:

- **General fund appropriations.** Thirty-nine percent of Pennsylvania's, and seven percent of Maryland's, energy program's budget is appropriated from the general fund.
- **Fees for services.** Washington generates $1 million (1.9 percent of the program's budget) by charging state and local government agencies fees for conducting energy audits and program designs.
- **Utility assessments.** California, New York, Maryland, and the Bonneville Power Administration in Washington fund energy programs through a surcharge on utility payments. For example, California's tax of $.0002 per kilowatt hour generates $40 million for the Energy Resources Program Account.
- **Revenue bonds.** The Iowa Facilities Improvement Corp. provides $12 million in financing for energy improvements in state facilities by issuing Energy Conservation Bonds. The bonds are repaid from rent paid by the state agencies on related equipment. Pennsylvania's Energy Development Authority issues $175 million in revenue bonds to finance energy projects.
- **Revolving loan funds.** Arizona, California, and Maryland have established revolving loan funds. The funds have been established with oil overcharge money, despite arguments that the federal program was intended to require restitution which must be completed within 10 years. These loan programs typically provide that loan proceeds will be repaid from savings in energy costs from increased efficiency.

A permanent source of funding will help Virginia receive federal dollars under the Energy Policy Act of 1992. New mechanisms for allocating money to states will stress leveraging of state money through matching grants, competition, and partnerships with the private sector. The department intends to submit an addendum to its budget to the Department of Planning and Budget in August and has requested the commission's input in this process.

Weatherization Program Funding

Another recipient of oil overcharge funds has been the Weatherization Assistance Program (WAP) administered by the Department of Housing and Community Development. WAP, which provides home weatherization assistance to qualifying low-income households, is implemented by 26 local agencies, which are bracing for a 50 percent cut in funding on July 1.

By saving money on energy costs, beneficiaries of weatherization programs are better able to manage their living expenses. WAP inspections also address heating system safety by testing carbon monoxide levels and electrical components. The maximum that can be spent on improvements at a residence is $1,700. By shifting from such improvements as weatherstripping and storm window installation to furnace upgrades, sidewall insulation, and other more cost-effective improvements, energy savings for WAP recipients have jumped from 5-10 percent in 1988-1989 to 30-72 percent in 1992-1993.

WAP has served over 135,000 persons in 74,000 households since its inception in 1981, but almost 220,000 households that are eligible for WAP assistance have not been served. Despite this need, the program's appropriation fell from $7.9 million in 1991-1992 to $3.7 million in 1992-1993, and to $3.1 million in 1993-1994. These figures do not reflect expenditure limits in these years, though, as $2.7 million of the 1991-1992 appropriation was carried over to the following year as a transition to the reduced funding, and $1 million of the 1992-1993 appropriation is planned for carryover into 1993-1994.

Several members voiced support for the activities of the weatherization program, while others stressed the need for accurate measurement of the program's efficiency. The Energy Preparedness Subcommittee will examine these issues further and report back to the commission.

Virginia Coal Industry

Following 1990's record-setting year, demand for Virginia coal has drifted downward, a trend expected to continue in 1993. Virginia coal production is anticipated to decline from 1992 levels by nearly 10 percent. Coal export shipments through the Hampton Roads ports may decline by almost 30 percent.

Virginia's coal industry reflects a national decline as U.S. production, overall, will decline by over 5 percent in 1993. Slumping electricity sales, linked to the national recession and milder winters and summers, have substantially reduced the demand for coal-fired electrical generation. Moreover, nuclear-powered generation facilities are quietly setting capacity factor records. Finally, economic downturns abroad — particularly in Europe — have dealt a heavy blow to the coal export market.

While the near-term outlook for Virginia's coal industry is continued tough times, the future holds some promise. The first electrical generating unit at Virginia Power/ODEC's 786 megawatt, coal-fired facility in Clover is scheduled to go on line in 1995; the second in 1996. When fully operational, the facility reportedly will require delivery of 11,000 tons of coal per day.

Additionally, the implementation of the 1990 Clean Air Act Amendments' Phase I could result in significant renewed demand for Virginia's low-sulfur, Central Appalachia coal — perhaps as much as an additional 36 million tons per year. Beyond 2000, however, the outlook is uncertain since key variables, including natural gas prices, the future of nuclear-powered generation, and an evolving environmental regulatory climate, will determine the coal industry's future.

The General Assembly expressed its concern about the coal industry's future during the 1993 Session, when it passed SJR 208, which requests the Virginia Department of Economic Development, in consultation with the Department of Mines, Minerals and Energy, and the Virginia Center for Coal & Energy Research, to develop a coal export plan. The plan is intended to identify key coal export markets and develop strategies for penetrating these markets.

Federal Energy Policy Act of 1992

The federal Comprehensive National Energy Policy Act of 1992 affects virtually every energy-producing industry and public utility. The state-by-state impacts are now emerging as key portions of the act are better understood, and regulations implementing key provisions are being developed

The change of administrations will heavily influence the act's ultimate impact. The Clinton Administration's budget plans and Congress's response to them will determine whether the federal government will back the act's policies with appropriations. Some of the programs created (or continued in some cases) will be in limbo until funding is authorized.

In the meantime, parts of the act will move ahead — particularly in the regulatory area. Additionally, states anticipating funding of certain programs, including the alternative-fueled state vehicle fleet program, will probably prepare state plans to ensure their qualification.

The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: Franklin D. Munyan

HJR 593: Study of Crime and Violence Prevention through Community Economic Stimulation and Development

July 8, 1993, Richmond

In its second meeting, the joint subcommittee focused on the urban homesteading concept under which eligible applicants are assisted in the purchase and renovation of vacant houses acquired by redevelopment housing authorities.

Richmond Plan

The Richmond urban homesteading plan was explained to the subcommittee as follows:

Criteria

- Applicants must be first-time home buyers (unless being relocated from a redevelopment and conservation area).
- Gross family income must be a minimum of $14,000 per year.
- Applicant must live in the house a minimum of five years.
- Applicant must apply for low-interest loans to rehabilitate the house.
- All other eligibility requirements must be met.

Funding

- Community Development Block Grant (CDBG),
- Private bank loans,
- The HOME program.

Tailored to Each Family

- Total cost of the house includes the purchase price (usually a nominal amount) and the amount needed to rehabilitate the property.
- Richmond Redevelopment and Housing Authority (RRHA) coordinates the financing package through its low-interest loan program.
- The authority prepares a detailed rehabilitation plan, specifications, and bid documents.

Conservation and Redevelopment Areas

Conservation areas are those containing a high percentage of houses with structural integrity and private occupancy. The RRHA does not participate in property acquisition in these areas, but rather helps existing home owners to conserve their homes and neighborhoods. On the other hand, redevelopment areas are those in which there may be some conservation, but also heavy acquisition by the authority.

Typically, a city council or board of supervisors designates an area as redevelopment or conservation at the request of the local redevelopment authority. In all such cases, sufficient funds

are necessary to carry through with necessary conservation or redevelopment.

Property Condemnations

A Newport News official noted that the Virginia *Code* should be modified to grant condemnation authority of structures where repeated violations occur involving illegal drugs and other unlawful activities. He explained that for condemnation to occur, a building must pose an imminent danger from structural defects as defined by the Virginia Building Code. He therefore requested that condemnation authority be extended to cover buildings that constitute a criminal danger to a neighborhood.

During discussion of this request, subcommittee members acknowledged that in those situations involving illegal drug use by tenants, the landlord/owner must be given notice that a drug dealer is residing in his property. If actual knowledge can be shown on the part of the owner, the property can be seized, but such seizure is subject to existing liens. It was noted that certificates of occupancy can be revoked. However, older buildings often do not have such certificates and criminal conduct alone is not sufficient for certificate revocation.

Chairman Hall asked that staff investigate procedures used in other jurisdictions to condemn property for drug violations and also determine how notice is given in such jurisdictions.

Neighborhood Tour

Following these presentations, the subcommittee toured the Carver and Randolph communities to examine properties rehabilitated under urban homesteading in Richmond. The tour illustrated the positive effect such homesteading programs have had in transforming crime-ridden areas into viable communities and in eliminating dilapidated and abandoned housing, which otherwise would be targeted for drug and criminal activity. The tour also demonstrated the acute need for and benefit of allocating more money to such programs.

Next Meeting

The subcommittee's next meeting will be held in the Norfolk area during the last week of August.

The Honorable Franklin P. Hall, *Chairman*
Legislative Services contact: Oscar R. Brinson

The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.

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The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

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.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

† Notice of Opportunity for Review and Comment

The Department of Criminal Justice Services (DCJS) announces its intention to apply to the Bureau of Justice Assistance, U.S. Department of Justice, for a grant pursuant to Part N of the Omnibus Crime Control and Safe Streets Act. Part N provides funds to states and localities for the purchase of closed-circuit television equipment and the provision of training in the use of the equipment in obtaining the testimony of children who are victims of abuse.

DCJS plans to apply for $50,000 in federal funds. In accord with applicable federal law, the state will contribute $17,000 in matching funds; so the total cost of this project will be $67,000.

The funds will be used to purchase closed-circuit television equipment which will be made available on an as-needed basis to courts throughout the state which need it to obtain testimony from children as permitted by § 18.2-67.9 of the Code of Virginia.

Grant funds will also be used to provide training to judges, prosecutors and others on the implementation of state law allowing the use of closed-circuit television in certain abuse cases, and on the proper methods for actually using the equipment.

This application for federal assistance must be postmarked no later than September 15, 1993. Persons interested in reviewing and commenting on the application may contact Ms. Fran Ecker at the Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219, telephone (804) 786-3967.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice to the Public

In compliance with federal regulations, the Department of Environmental Quality is submitting additions and updates of the following state laws and agency regulations to the Federal Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration, for its review and inclusion into the Virginia Coastal Resources Management Program.

1. Amendments to Virginia Code Title 28.2, Fisheries and Habitat of the Tidal Waters, addressing the Chapter 811 Acts of the 1990 Assembly.

Effective July 1, 1990, these amendments concerning the regulation of subaqueous lands, tidal wetlands and coastal primary sand dunes authorize the Circuit Court to impose civil penalties and the commission or local wetlands board to issue restoration orders and assess civil charges for violations of the applicable statutes.

2. Amendment to Virginia Codes 62.1-444.15:5 regarding the statutory provision for the Virginia Water Protection Permit and its regulation VR 680-15-02.

Since the Water Protection Permit Regulation became effective May, 1992, this provision has been used to regulate certain federally-permitted activities which require state certification under § 401 of the Clean Water Act.

OCRM will review these changes to determine whether they constitute amendments to the Virginia Coastal Resources Management Program for purposes of ensuring federal consistency with that program.

In 1972, the United States Congress passed the Coastal Zone Management Act (CZMA). The Act's passage demonstrated the national interest in the effective management, protection, development, and beneficial use of the nation's coastal resources. One policy CZMA was to encourage the states to adopt their own management programs in order to meet the goals of the Act. Consequently, the states were provided federal assistance to develop and administer their programs. The Commonwealth of Virginia, through the Council on the Environment, developed a coastal management program, which received federal approval in 1986.

Since the program's inception, Virginia has accepted federal assistance through grants awarded by the National Oceanic and Atmospheric Administration. To be eligible to receive those grants, states must abide by federal regulations.

One condition, found in 15 CFR 923.80-923.84, requires

states to submit any amendments to their programs to OCRM so that it may determine if the program, after the change, is still approvable. Federal rules define amendments as "Substantial changes in, or substantial changes to enforceable policies or authorities related to: boundaries, uses subject to the management program; criteria or procedures for designating or managing areas for preservation or restoration; consideration of the national interest involved in the planning for and in the siting of facilities which are not necessary to meet requirements which are other than local in nature." (15 CFR 923.80(c)).

A state is not required to go through the amendment process if a change is a routine program implementation (RPI). An RPI is defined as "Further detailing of a state's program that is a result of implementing provisions approved as part of a state's approved management program that does not result in the type of action described in 15 CFR 923.80(c)" (above).

Based on the federal criteria, the Commonwealth of Virginia has determined that none of the changes listed in this notice constitutes an amendment to the Virginia Coastal Resources Management Program. All of the changes were made following extensive public notice and hearings and official enactment or formal adoption proceedings.

These changes will be submitted to OCRM in summary form, copies of which can be obtained from Jeannie Lewis Smith of the Office of Public and Intergovernmental Affairs, the Department of Environmental Quality, 202 North 9th Street, Suite 900, Richmond, Virginia 23219, or by calling (804) 786-4500.

The submittal date to OCRM will be August 9, 1993. The office has 30 days from that date for its review. Any comments on whether the change is a routine program implementation may be submitted to OCRM by August 30, 1993, at the following address:

Mr. Joshua Lott
NOAA/NOS
Coastal Programs Division
1305 East-West Highway
Silver Spring, MD 20910

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in the Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION - RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04
EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET (Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

ERRATA

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: VR 425-02-12. Virginia Confined Space Standard for the Construction Industry.

Publication: 9:22 VA.R. 3923-3931 July 26, 1993.

Corrections to Final Regulation:

Page 3923, column 2, § 1. Definitions., in the definition of "Attendant," after "individual" insert "with no other duties"

Page 3925, column 2, replace "§ 4. Atmosphere testing." with "§ 4. Atmospheric testing."

Page 3927, column 1, last line of § 8 D, replace "resusitation" with "resuscitation"

Page 3928, column 1, line 4, the IDLH LEVEL for Hydrogen chloride was left out; insert "100 ppm" at the end of line 4

* * * * * * * *

Title of Regulation: VR 425-02-36. Virginia Occupational Safety and Health Standards for the General Industry - Air

Contaminants Standards (1910.1000).

Publication: 9:22 VA.R. 3934-3935 July 26, 1993.

Corrections to Final Regulation:

Page 3934, bottom of column 2, in the listing of Federal Terms and VOSH Equivalent, delete "Industry" under Federal Terms and insert on the same line "Industry" under VOSH Equivalent

* * * * * * * *

Title of Regulation: VR 425-02-90. General Industry Standard for Occupational Exposure to Cadmium (1910.1027).

Publication: 9:22 VA.R. 3936-3937 July 26, 1993.

Correction to Final Regulation:

Page 3936, column 2, in the listing of Federal Terms and VOSH Equivalent, delete "Industry" under Federal Terms and insert on the same line "Industry" under VOSH Equivalent

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General Notices

Publication: 9:22 VA.R. 4058 July 26, 1993.

Correction to the Notice to the Public:

Page 4058, column 1, item 3, the VR number is incorrect. The correct number is "VR 425-02-93"

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

September 23, 1993 - 9 a.m. – Open Meeting
Virginia Association of Homes for Adults, Inc., Suite 101, United Way Building, 224 West Broad Street, Richmond, Virginia. ♿

Business will include further discussion on the goals and objectives for the Virginia Long-Term Care Ombudsman Program.

Contact: Etta V. Butler-Hopkins, Assistant Ombudsman, Virginia Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271 or toll-free 1-800-552-3402.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **September 29, 1993 - 9 a.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 Consumer 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, 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 ☎

VIRGINIA AGRICULTURAL COUNCIL

August 23, 1993 - 9:15 a.m. – Open Meeting
Embassy Suites, 2925 Emerywood Parkway, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

This is the council's annual meeting whereby financial reports and project activities will be reviewed. The council 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 assistant secretary of the Virginia Agricultural Council identified in this notice at least 10 days before the meeting date, so that suitable arrangements can be made for any appropriate accommodation.

Contact: Thomas R. Yates, Assistant Secretary, 1100 Bank St., Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

ALCOHOLIC BEVERAGE CONTROL BOARD

August 30, 1993 - 9:30 a.m. – Open Meeting
† **September 13, 1993 - 9:30 a.m.** – Open Meeting
† **September 29, 1993 - 9:30 a.m.** – Open Meeting
† **October 13, 1993 - 9:30 a.m.** – Open Meeting
† **October 25, 1993 - 9:30 a.m.** – Open Meeting
† **November 8, 1993 - 9:30 a.m.** – Open Meeting
† **November 22, 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.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Architects

† **September 16, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from April 15, 1993, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Interior Designers

† **September 17, 1993 - 1 p.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from May 20, 1993, meeting; (ii) review applications; and (iii) interview applicants.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Land Surveyors

† **September 8, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from June 16, 1993, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

Board for Professional Engineers

August 24, 1993 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from May 19, 1993, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

AVIATION BOARD

August 25, 1993 - 9 a.m. – Open Meeting
August 27, 1993 - 9 a.m. – Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

A board meeting held in conjunction with Virginia Aviation Conference. The board will receive applications for state grants on August 25 and announce funding allocations on August 27.

Contact: Nancy Brent, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284 or fax (804) 786-3690.

Annual Virginia Aviation Conference

August 25, 1993 - 9 a.m. – Open Meeting
August 26, 1993 - 9 a.m. – Open Meeting
August 27, 1993 - 9 a.m. – Open Meeting
Radisson Hotel Hampton, 700 Settlers Landing Road, Hampton, Virginia.

Speakers and panel discussions on matters of interest to the aviation community. Various aviation organizations also hold meetings during this conference.

Contact: Nancy Brent, Department of Aviation, 4508 S. Laburnum Ave., Richmond, VA 23231-2422, telephone (804) 786-6284 or fax (804) 786-3690.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Central Area Review Committee

August 26, 1993 - 10 a.m. – Open Meeting
September 29, 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 review committee will review Chesapeake Bay Preservation Area programs for the central area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review

committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD ☎

Northern Area Review Committee

September 23, 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 review committee will review Chesapeake Bay Preservation Area programs for the northern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

August 27, 1993 - 1 p.m. – Open Meeting

City of Hampton's Planning Office Conference Room, Harbor Center Building, 2 Eaton Street, 9th Floor, Hampton, Virginia. ♿ (Interpreter for the deaf provided upon request)

September 24, 1993 - 1 p.m. – Open Meeting

Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the southern area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting; however, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440, toll-free 1-800-243-7229 or toll-free 1-800-243-7229/TDD ☎

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Coordinating Committee

† **September 7, 1993 - 3 p.m.** – Open Meeting
Saint Joseph's Villa, 8000 Brook Road, Administrative Building, Richmond, Virginia. ♿

† **October 15, 1993 - 8:30 a.m.** – Open Meeting
Office of Coordinator, Interdepartmental Regulation, 730 East Broad Street, Theatre Row Building, Richmond, Virginia. ♿

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

COMPENSATION BOARD

September 1, 1993 - 1 p.m. – Open Meeting
Ninth Street Office Building, 202 North 9th Street, Room 913/913A, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A routine meeting to conduct business.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

BOARD OF CONSERVATION AND RECREATION

September 9, 1993 - 2 p.m. – Open Meeting
Department of Environmental Quality, Water Division, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ♿ (Interpreter for deaf provided upon request)

A meeting to receive views and comments and answer questions of the public concerning the intended regulatory action to amend VR 215-00-00, Regulatory Public Participation Guidelines.

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 Mr. App at the address below or telephone at (804) 786-4570 or (804) 786-2121/TDD. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

Contact: Leon E. App, Executive Assistant, Virginia Department of Conservation and Recreation, 203 Governor

Street, Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141 or (804) 786-2121/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

† **September 1, 1993 - 7 p.m.** – Open Meeting
Lancaster High School (The Commons), Route 3, Lancaster County, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public information meeting relating to the preparation of a comprehensive master plan for Belle Isle State Park, located on the Rappahannock River in Lancaster County, Virginia.

Contact: Gary Waugh, Public Relations Manager, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5045 or (804) 786-2121/TDD ☎

September 9, 1993 - 2 p.m. – Open Meeting
Department of Environmental Quality, Water Division, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ♿ (Interpreter for deaf provided upon request)

A meeting to receive views and comments and answer questions of the public concerning the intended regulatory action to amend VR 217-00-00, Regulatory Public Participation Guidelines.

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 Mr. App at the address below or telephone at (804) 786-4570 or (804) 786-2121/TDD. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

Contact: Leon E. App, Executive Assistant, Virginia Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

Complaints Committee

August 25, 1993 - 8 a.m. – Open Meeting
3600 West Broad Street, 4th Floor, Conference Room 1, Richmond, Virginia.

A regular meeting.

Contact: A.R. Wade, Assistant Director, Board for Contractors, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-0136.

Recovery Fund Committee

September 22, 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 discuss may be conducted in executive session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

Regulatory/Statutory Review Committee

August 31, 1993 - 9 a.m. – Open Meeting
3600 West Broad Street, Conference Room 4A and B, Richmond, Virginia. ♿

A meeting to determine needed changes/additions/revisions in procedures, requirements, and standards applicable to Class B and Class A licenses.

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

August 28, 1993 – Written comments may be submitted until this date.

October 6, 1993 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justice Services Board intends to amend regulations entitled: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.** The regulation mandates entry-level training requirements for dispatchers.

Statutory Authority: § 9-170 (1) and (8) of the Code of Virginia.

Contact: L. T. Eckenrode, Division Director, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

* * * * * * * *

September 29, 1993 - 2 p.m. – Public Hearing
State Capitol, House Room 1, Richmond, Virginia.

September 24, 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 Criminal Justice Services Board intends to amend regulations entitled: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.** The purpose of the proposed amendment is to permit use of nondedicated telecommunication lines to access criminal history record information in limited, but secure, circumstances. Exceptions to the current requirement for use of dedicated telecommunication lines for data transmission would be granted on an exceptional basis provided that documented policies and procedures ensure that access to criminal history record information is limited to authorized users.

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

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

BOARD OF DENTISTRY

† **September 30, 1993 - 8:30 a.m.** – Open Meeting
† **October 1, 1993 - 1:30 a.m.** – Open Meeting
† **October 2, 1993 - 8:30 a.m.** – Open Meeting
Embassy Suites, 2925 Emerywood Parkway, Richmond, Virginia.

Formal hearings will be held on September 30, 1993. On October 1, 1993, a business meeting of the Board of Dentistry will be held. Agenda to include standing committees and issues concerning dentistry. Committee report to include proposed regulations regarding continuing education, endorsement and trade names. This is a public meeting. A 20 minute public comment period will be held beginning at 1:30 p.m. on October 1, 1993; however, no other public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

STATE EDUCATION ASSISTANCE AUTHORITY

August 27, 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 Education Assistance Authority intends to amend regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs under Title IV, Part B of the Higher Education Act of 1965 as Amended.** The purpose of the proposed amendments is to incorporate changes to federal statute and regulations, to reduce lender due diligence requirements and to respond to changes in federal interest payments for claims.

Statutory Authority: § 23-38.33:1 C 7 of the Code of Virginia.

Written comments may be submitted through August 27, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 East Franklin Street, Richmond, Virginia, 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4000 or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - FAIRFAX COUNTY, CITY OF FAIRFAX, AND THE TOWNS OF HERNDON AND VIENNA

September 23, 1993 - 9:30 a.m. – Open Meeting
Fairfax County Government Center, 12000 Government Center Parkway, Conference Room 9, Fairfax, Virginia.

A public hearing and LEPC meeting regarding 1993 HMER Plan.

Contact: Marysusan Giguere, Fire and Rescue Department, Management Analyst II, 4100 Chain Bridge Rd., Suite 400, Fairfax, VA 22030, telephone (703) 246-3991.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

September 20, 1993 - 1:30 p.m. – Open Meeting
1 County Complex Court, Potomac Conference Room, Prince William, Virginia.

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, 1 County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

DEPARTMENT OF ENVIRONMENTAL QUALITY

August 25, 1993 - 10 a.m. – Open Meeting
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Board Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A public meeting to discuss and receive comments on the process to amend the Regulated Medical Waste

Management Regulations on behalf of the Virginia Waste Management Board. The meeting is being held jointly with the Air Division on companion proposals for regulations. The meeting will include a discussion period of the possible changes and the public will be invited to submit written and oral comments.

Contact: William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, Monroe Bldg.,101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2966 or (804) 371-8737/TDD ☎

† **August 31, 1993 - 8 p.m.** – Public Hearing
Municipal Offices Building, 143 East King Street, Strasburg, Virginia. 🖻

A hearing will be held for the purpose of receiving formal public comment on the application by Judd's Incorporated, Shenandoah Valley Press Division, to receive a DEQ Air Division Permit to replace two lithographic press lines with two new, higher capacity lines. An information briefing will be presented at the same location at 7 p.m.

Contact: John R. McKie, Environmental Engineer Sr., Department of Environmental Quality, 6625 Brandon Ave., Suite 310, Springfield, VA 22150, telephone (703) 644-0311.

† **September 8, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, 4900 Cox Road, Training Room, Glen Allen, Virginia.

The Interagency Committee on Land Application of Sewage Sludge will meet to discuss PAN rates for the SCAT regulations, the use of values for soil productivity classification and crop N requirements, and the future role of the committee.

Contact: Martin Ferguson, Department of Environmental Quality, 4900 Cox Rd., Glen Allen, VA, 23060 telephone (804) 527-5030.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **September 8, 1993 - 10 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. 🖻

A scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

August 26, 1993 - 9 a.m. – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

Board members will spend the day touring department-owned facilities, including the dedication of the Whitehurst Marsh tract in Virginia Beach.

August 27, 1993 - 9 a.m. – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

Committees of the Board of Game and Inland Fisheries (Finance, Planning, Wildlife and Boat, Law and Education and Liaison) will meet. Each committee will review those agenda items appropriate to its authority and, if necessary, make recommendations for action to the full board. Other general and administrative matters, as necessary, will be discussed, and appropriate actions will be taken. During the Wildlife and Boat Committee meeting, staff will present the proposed 1993-94 migratory waterfowl seasons that will be based on the framework provided by the U.S. Fish and Wildlife Service.

August 28, 1993 - 9 a.m. – Open Meeting
Virginia Beach Resort and Conference Center, 2000 Shore Drive, Virginia Beach, Virginia.

The board will convene an executive session at 8 a.m. At 9 a.m., the public meeting will begin. In addition to adopting the 1993-94 migratory waterfowl seasons, other general and administrative matters, as necessary, will be discussed, and the appropriate actions will be taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230-1104, telephone (804) 367-1000.

DEPARTMENT OF GENERAL SERVICES

October 11, 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 Department of General Services intends to repeal regulations entitled: **VR 330-02-06, Regulations for the Certification of Laboratories Analyzing Drinking Water** and adopt regulations entitled: **VR 330-02-06:1, Regulations for the Certification of Laboratories Analyzing Drinking Water.** The purpose of the proposed action is to repeal outdated regulations and promulgate regulations to provide a mechanism to assure that laboratories are capable of providing data for compliance under the State Drinking Water Act.

Statutory Authority: § 2.1-429 of the Code of Virginia and 40 CFR 141.

Contact: Dr. James L. Pearson, Director, Division of Consolidated Laboratory Services, 1 N. 14th St., Richmond, VA 23219, telephone (804) 786-7905.

BOARD FOR GEOLOGY

August 27, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ♿

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VDH VIRGINIA DEPARTMENT OF HEALTH
Protecting You and Your Environment

DEPARTMENT OF HEALTH (STATE BOARD OF)

August 23, 1993 - 9 a.m. – Open Meeting
Eastern Shore Health District, Accomac, Virginia. ♿ (Interpreter for deaf provided upon request)

A working session and tour followed by an informal dinner at Smith's Chapel Methodist Church, Upshur Neck Road, Quinby, Virginia.

August 24, 1993 - 9 a.m. – Open Meeting
Nandua High School, Accomac, Virginia. ♿ (Interpreter for deaf provided upon request)

Business meeting and adjournment.

Contact: Susan R. Rowland, MPA, Special Assistant to Commissioner, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

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August 31, 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 Health intends to **repeal** regulations entitled: **VR 355-17-02. Sewerage Regulations** and **adopt** regulations entitled **VR 355-17-100. Sewage Collection and Treatment Regulations.** The proposed regulations govern the design, construction and operation of both sewage collection systems and sewage treatment works, including the use of sewage sludge, and will replace existing regulations.

Statutory Authority: §§ 32.1-164 and 62.1-44.19 of the Code of Virginia.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755.

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August 24, 1993 - 9 a.m. – Public Hearing
1500 East Main Street, Room 214, Richmond, Virginia.

August 27, 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 355-40-400. Regulations Governing the Virginia Medical Scholarship Program.** The regulation sets forth eligibility criteria, award process, terms, conditions, and circumstances under which Virginia Medical Scholarships will be awarded.

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

Contact: E. George Stone, Director, Virginia Medical Scholarship Program, Virginia Department of Health, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-6970.

BOARD OF HEALTH PROFESSIONS

† **August 23, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿

The board will conduct an informational proceeding and receive comment on the need for regulation of marriage and family therapists pursuant to Senate Joint Resolution 1036 of the 1993 General Assembly.

† **August 23, 1993 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿

The board will conduct an informational proceeding and receive comment on the need for regulation of private rehabilitation providers.

† **August 23, 1993 - 2 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿

The board will conduct an informational proceeding and receive comment on the need for the regulation of tattooists and tattoo parlors pursuant to the Appropriations Act of the 1993 General Assembly.

† **August 24, 1993 - 11 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to consider proposed regulations pursuant to the Self-Referral Act of the 1993 Acts of Assembly and other regular agenda items.

Committee on Professional Education and Public Affairs

† **August 24, 1993 - 12:30 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 2, Richmond, Virginia. ♿

The committee will review department public information activities, including new brochures and publications.

Bylaws Committee

† **August 24, 1993 - 4:30 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ♿

A meeting to consider proposed amendments to the bylaws of the Board of Health Professions which are receiving to implement the Virginia Practitioner Self-Referral Act of 1993 (§ 54.1-2410 et seq. of the Code of Virginia).

Contact: Richard D. Morrison, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

DEPARTMENT OF HEALTH PROFESSIONS

† **September 8, 1993 - 9 a.m.** – Open Meeting
Hyatt Hotel, 6624 West Broad Street, Taylor Room, Richmond, Virginia. ♿

An informal conference committee meeting. Public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

August 24, 1993 - 9:30 a.m. – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

† **October 26, 1993 - 9:30 a.m.** – Open Meeting
Blue Cross Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting. All council task forces will meet at 8:30 a.m. prior to the full council meeting.

Contact: Kim Bolden, Public Relations Coordinator, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

September 13, 1993 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct examinations to eligible candidates, review enforcement cases, conduct regulatory review and discuss other matters which may require board action.

Contact: Mr. Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

September 13, 1993 - 1 p.m. – Open Meeting
September 14, 1993 - 1 p.m. – Open Meeting
Mountain Lake, Virginia. ♿ (Interpreter for the deaf provided upon request)

The council's annual retreat. There will be a general business meeting on Tuesday, September 14. For more information, contact the council.

Contact: Anne M. Pratt, Associate Director, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 361-8017/TDD ☎

VIRGINIA HISTORIC PRESERVATION FOUNDATION

NOTE: CHANGE IN MEETING DATE
September 22, 1993 - 10:30 a.m. – Open Meeting
State Capitol, Senate Room 4, Capitol Square, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A general business meeting.

Contact: Margaret Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

September 9, 1993 - 2 p.m. – Open Meeting
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ♿

A meeting to receive comments and answer questions from the public concerning the intended regulatory actions to amend VR 390-01-01, Public Participation Guidelines for the Historic Resources Board and VR 392-01-01, Public Participation Guidelines for the Department of Historic Resources. Amendments to both sets of guidelines have been made necessary by amendments to the Administrative Process Act that took effect on July 1, 1993.

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 facility should contact Ms. Doneva Dalton at the Department of Environmental Quality, Office of Regulatory Services, P.O. Box 11143, Richmond, VA 23230, or at telephone number (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, August 23, 1993.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

September 15, 1993 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A joint meeting of the Board of Historic Resources and State Review Board to consider the 1993-94 Work Program for the Department of Historic Resources.

Contact: Margaret Peters, Information Director, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **September 8, 1993 - 9 a.m.** – Open Meeting
Wintergreen Lodge, Shamokin Room, Wintergreen, Virginia. ♿

A regular meeting 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 they 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.

VIRGINIA INTERAGENCY COORDINATING COUNCIL (VICC) EARLY INTERVENTION

† **September 22, 1993 - 9:30 a.m.** – Open Meeting
Chesterfield County Public Library, 9501 Lori Road, Chesterfield, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Interagency Coordinating Council (VICC), according to PL102-119, Part H early intervention program for disabled infants and toddlers and their families is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency and the other state agencies involved in Part H in the implementation of a statewide early intervention program.

Contact: Michael Fehl, Director, Mentally Retarded Children/Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

VIRGINIA'S INTERCOMMUNITY TRANSITION COUNCIL

† **September 2, 1993 - 9 a.m.** – Open Meeting
The Omni Charlottesville Hotel, Charlottesville, Virginia. ♿ (Interpreter for the deaf provided upon request)

State and local representatives from 13 state agencies and representatives of the business and consumer community form the VITC. The VITC meets quarterly to focus on strategic targets to move Virginia forward in the development of statewide and systematic transition services for all youths with disabilities. 11:30 a.m. to 12:30 p.m. of every meeting is designated for public comments to enable persons or groups who are not standing members of the VITC to express opinions and recommendations to the VITC regarding transition issues.

Contact: Kathy Trossi, Education Services Manager, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-6230 or toll-free 1-800-552-5019, or Sharon deFur, Associate Specialist/Transition, P.O. Box 2120, Monroe Bldg., 23rd Floor, Richmond, VA 23216, telephone (804) 225-3242.

DEPARTMENT OF LABOR AND INDUSTRY

Apprenticeship Council

† **September 16, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the council. The tentative agenda is (i) a report of the Apprenticeship Related

Instruction Study Committee; and (ii) a discussion of proposed public participation guidelines.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2381.

STATE LAND EVALUATION ADVISORY COUNCIL

August 24, 1993 - 10 a.m. – Open Meeting
September 8, 1993 - 10 a.m. – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: Ronald W. Wheeler, Acting Assistant Commissioner, Virginia Department of Taxation, Office of Taxpayer Services, 2220 W. Broad St., Richmond, VA 23219, telephone (804) 367-8028.

LIBRARY BOARD

September 13, 1993 - 10 a.m. – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia. ♿

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

STATE COUNCIL ON LOCAL DEBT

September 15, 1993 - 11 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting, subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4928.

COMMISSION ON LOCAL GOVERNMENT

September 27, 1993 - 11 a.m. – Open Meeting
Purcellville area (site to be determined)

Oral presentations regarding the Town of Purcellville - Loudoun County Agreement defining annexation rights.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by September 13, 1993.

September 27, 1993 - 7 p.m. – Public Hearing
Purcellville area (site to be determined)

Public hearing regarding the Town of Purcellville - Loudoun County Agreement defining annexation rights.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by September 13, 1993.

September 28, 1993 - 9 a.m. – Open Meeting
Purcellville area (site to be determined)

Regular meeting of the Commission on Local Government to consider such matters as may be presented.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by September 13, 1993.

November 4, 1993 - 9 a.m. – Open Meeting
Richmond area (site to be determined)

Oral presentations - Town of Colonial Beach - Westmoreland County. Arbitration of school funding issue at request of localities.

Persons desiring to participate in the Commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices by October 21, 1993.

Contact: Barbara Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

STATE LOTTERY BOARD

August 23, 1993 - 10 a.m. – Open Meeting
† **September 27, 1993 - 10 a.m.** – Open Meeting
2201 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State

Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎

ADVISORY COMMITTEE ON MAPPING, SURVEYING AND LAND INFORMATION SYSTEMS

† **September 23, 1993 - 10 a.m.** – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia.

A regularly scheduled meeting. GIS comprehensive data project to be discussed.

Contact: Chuck Tyger, Computer Systems Chief Engineer, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 786-8169 or (804) 225-3624/TDD ☎

MARINE RESOURCES COMMISSION

August 24, 1993 - 9:30 a.m. – Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues.

The commission will hear and decide fishery management items at approximately 12 noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing.

Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing.

The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646, or (804) 247-2292/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

September 22, 1993 - 1 p.m. – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The meeting will focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health, including prenatal care, school health, and teenage pregnancy.

Contact: Nancy C. Ford, MCH Nurse Consultant, Virginia Department of Health, Division of Child and Adolescent Health, 1500 E. Main St., Suite 137, Richmond, VA 23218-2448, telephone (804) 786-7367.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **August 31, 1993 - 10 a.m.** – Open Meeting
600 East Broad Street, Board Room, Suite 1300, Richmond, Virginia. ♿

A meeting to discuss medical assistance services and issues pertinent to the board.

Contact: Patricia A. Sykes, Policy Analyst, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7958 or toll-free 1-800-343-0634/TDD ☎

Drug Utilization Review Board

September 23, 1993 - 3 p.m. – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

A regular meeting of the DMAS DUR Board. 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

† **October 7, 1993 - 8 a.m.** – Open Meeting
† **October 8, 1993 - 8 a.m.** – Open Meeting
† **October 9, 1993 - 8 a.m.** – Open Meeting
† **October 10, 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 Thursday, October 7, 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 Thursday, Friday, Saturday and Sunday 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 board will entertain public comments during the first 15 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 622-7197/TDD ☎

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† **October 27, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The proposed amendments address misleading or deceptive advertising, pharmacotherapy for weight loss, examinations for licensure in medicine and osteopathy, licensure for endorsement, examination fee, and delete a statement lacking statutory authority.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, 54.1-2914 of the Code of Virginia.

Written comments may be submitted until October 27, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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† **October 25, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.** The proposed amendments address traineeship and examination after inactive practice when seeking physical therapist and physical therapist assistant licensure. In addition, a process fee is established for withdrawal of applications.

Statutory Authority: §§ 54.1-2400, 54.1-2943 and 54.1-2946 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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† **September 14, 1993 - 9 a.m.** – Public Hearing
6606 West Broad Street, 5th Floor, Richmond, Virginia.

† **October 25, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.** The purpose of the proposed amendments is to establish requirements granting prescriptive authority to physicians' assistants to prescribe and administer Schedule VI controlled substances and devices, and establish a clear and concise definition of the academic study required for prescriptive authority.

Statutory Authority: §§ 54.1-2400 and 54.1-2952.1 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

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

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† **October 25, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to amend regulations entitled: **VR 465-08-1. Regulations for the Certification of Occupational Therapists.** The proposed amendments address English proficiency by foreign-trained occupational therapists and examination criteria for certification.

Statutory Authority: §§ 54.1-2400, 54.1-2956.1 and 54.1-2956.4 of the Code of Virginia.

Written comments may be submitted until October 25, 1993, to Hilary H. Connor, M.D., Executive Director, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

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Credentials Committee

† **October 8, 1993 - 8:15 p.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street 5th Floor, Richmond, Virginia. ♿

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23233, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

† **September 9, 1993 - 9 a.m.** – Open Meeting
Sheraton-Fredericksburg, I-95 and Route 3, Fredericksburg, Virginia. ♿

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Legislative Committee

September 3, 1993 - 9 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review §§ 54.1-2936, 54.1-2937 and 54.1-2961 of the Code of Virginia, and develop regulations for licensure, practice and renewal requirements for a limited license or temporary license in Virginia. The committee will also review the practice requirements for respiratory therapy, discuss referral for physical therapy pursuant to § 54.1-2943, and the fee for the PMLEXIS examination.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

September 1, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to review the impact of health care reform which may impact the regulations for the practice of occupational therapy as presented at the American Occupational Therapy Association, Inc., at their annual meeting in March. Also, to review regulations relating to foreign educated therapists to consider additional requirements or alternatives to ensure minimal competency requirements to practice occupational therapy with safety to the public, and such other issues which may come before the advisory board. The chairperson will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

September 17, 1993 - 9 a.m. – Open Meeting
6606 West Broad Street, Board Room 3, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to (i) receive specific reports from officers and staff; (ii) review and evaluate traineeship evaluation forms; (iii) discuss requirements for facilities to employ foreign educated trainees and related forms; (iv) clarify the decision to allow foreign educated therapist to sit for the examination during the traineeship; (v) clarify, by regulation, the period for license requirements in another state to be eligible for waiver of the required traineeship for foreign applicants; (vi) review § 6.1 of the regulations; (vii) review passing score for licensure examination; (viii) review the use of or storage of schedule VI drugs; and (ix) conduct such other business which may come before the advisory board. The chairman will entertain public comments during the first 15 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

† **September 2, 1993 - 7 p.m.** – Open Meeting
† **October 7, 1993 - 7 p.m.** – Open Meeting
1845 Orange Road, Culpeper, Virginia. ♿

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases for eligibility to participate with the program. It will review the previous month's operation (budget and program-related business).

Contact: Lisa Ann Peacock, Program Director, 1845 Orange Rd., Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

September 21, 1993 - 2 p.m. – Open Meeting
Meeting location to be announced.

A meeting to consider proposed gifts, purchases and loans of art works.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Finance Committee

September 23, 1993 - 11 a.m. – Open Meeting
Virginia Museum of Fine Arts Conference Room, Richmond, Virginia. ♿

A meeting to conduct budget review and approval.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Board of Trustees

September 23, 1993 - Noon – Open Meeting
Virginia Museum of Fine Arts Auditorium, Richmond, Virginia. ♿

First meeting FY 1993-94 of the full Board of Trustees to receive reports from committees and staff; conduct budget review; and conduct acquisition of art objects.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF NURSING

† **August 23, 1993 - 9:30 a.m.** – Open Meeting
Virginia Employment Commission, 165 Deer Run Road, Danville, Virginia. (Interpreter for the deaf provided upon request)

† **August 31, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 3, Richmond, Virginia. (Interpreter for the deaf provided upon request)

† **September 1, 1993 - 10 a.m.** – Open Meeting
Dabney S. Lancaster Community College, Route 60 West, Backels Hall (Administration Building), Board Room, Clifton Forge, Virginia. (Interpreter for the deaf provided upon request)

† **September 1, 1993 - 3 p.m.** – Open Meeting
Sheraton Airport Inn, 2727 Ferndale Drive, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

† **September 2, 1993 - 9:30 a.m.** – Open Meeting
Council Chambers, Municipal Building, 215 Church Avenue, 4th Floor, Room 450, Roanoke, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with certified nurse aides. Public comment will not be received.

† **September 21, 1993 - 8:30 a.m.** – Open Meeting
† **September 24, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings. Public comment will not be received.

† **September 22, 1993 - 9 a.m.** – Open Meeting
† **September 23, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular meeting of the board to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and endorsement and other matters under the jurisdiction of the board. Public comment will be received during an open forum session beginning at 11 a.m. on Wednesday, September 22. A public hearing on proposed Board of Nursing Regulations, VR 495-01-1, will be held at 2 p.m. on Wednesday, September 22, 1993.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9909, or (804) 662-7197/TDD ☎

Special Conference Committee

August 23, 1993 - 8:30 a.m. – Open Meeting
† **August 24, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A meeting to conduct informal conferences with licensees to determine what, if any, action should be recommend to the Board of Nursing. Public comment will not be received.

Contact: M. Teresa Mullin, R.N., Assistant Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

October 12, 1993 - 9 a.m. – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct board business and any other matters which may require board action.

Contact: Mr. Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

POLYGRAPH EXAMINERS ADVISORY BOARD

September 21, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

The meeting is 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: Mr. Geralde W. Morgan, Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF PSYCHOLOGY

† **September 14, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

An informal fact-finding conference to review residency documentation of applicant Michael D. Brunner, Ph.D. Following the informal conference the board will conduct general board business.

Contact: Evelyn B. Brown, Executive Director, or Jane Ballard, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

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† **September 14, 1993 - 9:30 a.m.** – Public Hearing
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia.

† **October 25, 1993** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Psychology intends to amend regulations entitled: **VR 565-01-02. Regulations Governing the Practice of Psychology.** The proposed amendments increase license renewal fees for psychologists and school psychologists and increase application fees for clinical psychologists. The proposed amendments also increase examination fees. The proposed regulations conform to § 54.1-113 of the Code of Virginia.

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

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913.

REAL ESTATE BOARD

† **September 8, 1993 - 10 a.m.** – Open Meeting
Pembrook Five, 293 Independence Boulevard, Suite 407, 4th Floor, Virginia Beach, Virginia.

The Real Estate Board will meet to conduct a formal hearing in the matter of Real Estate Board v. Herbert Morewitz, II, File Number 92-00640.

Contact: Stacie Camden, Legal Assistant, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2393.

BOARD OF REHABILITATIVE SERVICES

† **September 23, 1993 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia.

A meeting to conduct regular monthly business meeting of the board.

Contact: Susan L. Urofsky, Commissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0318, toll-free 1-800-552-5019 or (804) 367-0315/TDD

VIRGINIA RESOURCES AUTHORITY

† **September 14, 1993 - 9:30 a.m.** – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of August 19, 1993, to review the authority's operations for the prior months, and to consider other matters and take other actions as they 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.

† **October 12, 1993 - 9:30 a.m.** – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of September 14, 1993, to review the authority's

operations for the prior months, and to consider other matters and take other actions as they 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.

† **November 9, 1993 - 9:30 a.m.** – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

A meeting to approve minutes of the meeting of October 12, 1993, to review the authority's operations for the prior months, and to consider other matters and take other actions as they 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., Mutual Building, 909 E. Main St., Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or fax (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

August 25, 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 system permits pursuant to § 32.1-166.1 et seq., § 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., Suite 177, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

August 27, 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 amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The amendments propose several changes to the fuel and cooling assistance components of the Energy Assistance Program. In fuel assistance, households applying for assistance will be allowed to establish or maintain one $5,000 savings account for education expenses or the purchase of a primary residence without penalty in the calculation of benefit amounts. Households receiving utility subsidies that must pay some heating expenses out-of-pocket will not have their benefit reduced. Additionally, income exempt in Food Stamps, ADC or Medicaid will be considered exempt in the determination of eligibility for fuel assistance. The cooling assistance component would be eliminated in FY 93-94.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted through August 27, 1993, to Charlene H. Chapman, Department of Social Services, 730 E. Broad St., Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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August 28, 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 615-45-5. Investigation of Child Abuse and Neglect In Out of Family Complaints.** The regulation establishes policy to be used for investigating child abuse and neglect which occurs in certain situations outside the child's family.

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Written comments may be submitted until August 28, 1993, to Rita Katzman, Program Manager, 730 East Broad Street, Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD OF SOCIAL WORK

† **September 24, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

An informal fact-finding conference.

† **September 30, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia. ♿

A formal hearing with a business meeting to follow, to consider general board business.

† **October 1, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia. ♿

A board meeting to discuss training curriculum for supervisors, and to consider amending regulations related to examination scheduling and standards of practice.

Contact: Evelyn B. Brown, Executive Director, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9914.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

September 20, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A general board meeting.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA SOIL AND WATER CONSERVATION BOARD

September 9, 1993 - 2 p.m. – Open Meeting
Department of Environmental Quality, Water Division, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ♿ (Interpreter for deaf provided upon request)

A meeting to receive views and comments and answer questions of the public concerning the intended regulatory action to amend VR 625-00-00:1, Regulatory Public Participation Guidelines.

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 Mr. App at the address below or telephone at (804) 786-4570 or (804) 786-2121/TDD. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, August 23, 1993.

† **September 28, 1993 - 7 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to receive views and comments and answer questions of the public concerning the intended regulatory actions to amend VR 625-02-00, Erosion and Sediment Control Regulations, and to promulgate VR 625-02-01, Erosion and Sediment Control Regulations.

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 Mr. App at the address below or telephone at (804) 786-4570 or (804) 786-2121/TDD. Persons needing interpreter services for the deaf must notify Mr. App no later than Monday, September 13, 1993.

Contact: Leon E. App, Executive Assistant, Virginia Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570, FAX (804) 786-6141, or (804) 786-2121/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

† **September 15, 1993 - 2 p.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

† **September 16, 1993 - 10 a.m.** – Open Meeting
Department of Transportation, 1401 East Broad Street, Board Room, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A monthly meeting of the Commonwealth Transportation Board to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

September 15, 1993 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

BOARD ON VETERANS' AFFAIRS

August 25, 1993 - 10 a.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia. ♿

Topics of discussion will include the state veterans cemetery and other items of interest to Virginia's veterans. The public is invited to speak on items of interest to the veteran community; however, presentations should be limited to 15 minutes. Speakers are requested to register with the aide present at the meeting and should leave a copy of their remarks for the record. Service organizations should select one person to speak on behalf of the entire organization in order to give ample time to accommodate all who may wish to speak.

Contact: Beth Tonn, Secretary for the Board, P.O. Box 809, Roanoke, VA 24004, telephone (703) 857-7104 or (703) 857-7102/TDD ☎

GOVERNOR'S COMMISSION ON VIOLENT CRIME

August 25, 1993 - 9 a.m. – Open Meeting
State Capitol, House Room 4, Richmond, Virginia. ♿

Discussion of programmatic proposals.

Contact: Kris Ragan, Special Assistant, 701 E. Franklin St., 9th Floor, Richmond, VA 23219, telephone (804) 225-3899.

VIRGINIA VOLUNTARY FORMULARY BOARD

September 2, 1993 - 10:30 a.m. – Open Meeting
Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thompson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

STATE WATER CONTROL BOARD

September 16, 1993 - 7 p.m. – Open Meeting
Fairfax County Government Center, Conference Center, Rooms 4 and 5, 1200 Government Center Parkway, Fairfax, Virginia.

A meeting to receive comments from interested persons on the intent to amend the Potomac Embayment Standards of VR 680-21-00, Water Quality Standards and on the costs and benefits of the intended action. (See Notices of Intended Regulatory Action)

Contact: Alan E. Pollock, Chesapeake Bay Program, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5155.

† **September 27, 1993 - 7 p.m.** – Open Meeting
Norfolk City Council Chambers, City Hall Building, 810 Union Street, 11th Floor, Norfolk, Virginia.

† **September 28, 1993 - 7 p.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Board Room, Glen Allen, Virginia.

† **September 29, 1993 - 2 p.m.** – Open Meeting
McCourt Building, 4859 Davis Ford Road, One County Complex, Prince William County Administration Center, Prince William, Virginia.

† **September 30, 1993 - 2 p.m.** – Open Meeting
Roanoke County Administration Center, 3738 Brambleton Avenue, S.W., Community Room, Roanoke, Virginia.

The staff of the Department of Environmental Quality will convene public meetings to receive comments from the public on the board's intent to adopt a General Virginia Water Protection Permit for minor road crossings, associated fills and channel modifications.

Contact: Martin Ferguson, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5030.

† **September 30, 1993 - 7 p.m.** – Open Meeting
Henry County Administration Building, Kings Mountain Road, Board Room, Collinsville, Virginia.

The staff of the Department of Environmental Quality will convene a public meeting to receive comments from the public on the proposed amendment of the Roanoke River Basin Water Quality Management Plan, and the proposed adoption of a new Smith-Dan Subarea Water Quality Management Plan.

Contact: Wellford Estes, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 562-3666.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **September 23, 1993 - 8:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ♿

A meeting to conduct regular board business and other matters which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

VIRGINIA DEPARTMENT OF YOUTH & FAMILY SERVICES
Youth Begins With You.

BOARD OF YOUTH AND FAMILY SERVICES

† **September 9, 1993 - 8:30 a.m.** – Open Meeting
Location to be decided.

† **October 14, 1993 - 8:30 a.m.**
700 Centre, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ♿

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

† **September 10, 1993 - 8:30 a.m.** – Open Meeting
Location to be decided.

A board planning retreat.

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

LEGISLATIVE

COMMISSION ON EARLY CHILDHOOD AND CHILD DAY CARE PROGRAMS

August 30, 1993 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ♿

Open meeting pursuant to § 9-291.1 et seq.

Contact: John McE. Garrett, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742; or Jessica Bolecek, Staff Attorney, Division of Legislative Services, General Assembly Bldg., 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE FINANCIAL IMPACT OF THIRD PARTY REIMBURSEMENT ON THE COMMONWEALTH'S PHARMACIES

† **August 24, 1993 - 10 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The joint subcommittee will have an organizational meeting to set goals for future meetings to study the financial impact of third party reimbursement on the Commonwealth's pharmacies. HJR 556.

Contact: Norma E. Szakal, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING GAME PROTECTION FUND

† **September 7, 1993 - 10 a.m.** – Open Meeting
State Capitol Building, House Room 4, Richmond, Virginia.

The joint subcommittee will meet to continue assessment of long-range financial status of the Game Protection Fund. HJR 444.

Contact: Martin G. Farber, Research Associate, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES

† **August 26, 1993 - 10 a.m.** – Open Meeting
Central Virginia Community College, Room 3217, Lynchburg, Virginia.

† **August 26, 1993 - 1:30 p.m.** – Public Hearing
Central Virginia Community College, Student Center Auditorium, Lynchburg, Virginia.

At the morning work session, the subcommittee will receive reports from the Department of Health on the status of the state AZT program, etc., the Early Intervention Center in Lynchburg, various institutes of higher education and Consolidated Lab. Testimony will be received from the community regarding services and organizations at the public hearing. HJR 692.

Contact: Norma E. Szakal, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE TO STUDY WAYS TO IMPROVE THE REGISTRATION AND ELECTORAL PROCESS AND ENCOURAGE VOTER PARTICIPATION

† **August 27, 1993 - 7 p.m.** – Public Hearing
Virginia Highlands Community College, Learning Resources Business Technology Center, Room 605, Abingdon, Virginia.

September 8, 1993 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ♿

The subcommittee is conducting regional hearings across the state to give the public an opportunity to comment on the electoral process in Virginia and to recommend ways to encourage voter participation and improve registration and election procedures. HJR 532.

Contact: Virginia Edwards, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

SELECT COMMITTEE ON SALES TAX EXEMPTIONS

September 16, 1993 - 11 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room B, Richmond, Virginia.

An open meeting. SJR 249, 1993.

Contact: Aubrey Stewart, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742, or John MacConnell, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION TO STUDY SENTENCING AND PAROLE POLICIES AND THE NEED TO ESTABLISH "TRUTH IN SENTENCING"

† **August 24, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The commission will hold an organizational meeting to set goals for the study of sentencing and parole policies and the need to establish "truth in sentencing."

Contact: Dr. Richard Kern, Division Director, Criminal Justice Research Center, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219.

JOINT SUBCOMMITTEE STUDYING SOLID WASTE MANAGEMENT AND RECYCLING NEEDS

† **September 15, 1993 - 10 a.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

The subcommittee will be hearing from industry representations and addressing the issue of full cost reporting. HJR 494.

Contact: Shannon Varner, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA CODE COMMISSION

† **September 15, 1993 - 9:30 a.m.** – Open Meeting
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

A general business meeting.

† **October 20, 1993 - 9:30 a.m.**
Speaker's Conference Room, General Assembly Building, 910 Capitol Square, Richmond, Virginia.

A general business meeting to award contract for the Virginia Administrative Code.

Contact: Joan W. Smith, Registrar of Regulations, General Assembly Bldg, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

JOINT COMMISSION TO STUDY MANAGEMENT OF THE COMMONWEALTH'S WORKFORCE AND ITS COMPENSATION, PERSONNEL, AND MANAGEMENT POLICIES AND TO RECOMMEND IMPROVEMENTS TO VIRGINIA'S SYSTEM

September 7, 1993 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. 🖻

SJR 279

Contact: John McE. Garrett, Senate of Virginia, P.O. Box 396, Richmond, VA 23203, telephone (804) 786-5742; or Nancy Roberts, Division Manager, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

August 23
Agricultural Council, Virginia
Health, State Board of
† Health Professions, Board of
Lottery Department, State
† Nursing, Board of
- Special Conference Committee

August 24
Architects, Professional Engineers, Land Surveyors, and Landscape Architects, Board for
- Board for Professional Engineers
† Health Professions, Board of
Health Services Cost Review Council, Virginia

Health, State Board of
Land Evaluation Advisory Council, State
Marine Resources Commission
† Nursing, Board of
† Sentencing and Parole Policies and the Need to Establish "Truth in Sentencing", Commission to Study

August 25
Aviation Board
Contractors, Board for
- Complaints Committee
Environmental Quality, Department of
Sewage Handling and Disposal Appeals Review Board
Violent Crime, Governor's Commission on

August 26
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
Game and Inland Fisheries, Board of
† Human Immunodeficiency Viruses, Joint Subcommittee to Study

August 27
Aviation Board
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Game and Inland Fisheries, Board of
Geology, Board for

August 28
Game and Inland Fisheries, Board of

August 30
† Alcoholic Beverage Control Board
Early Childhood and Child Day Care Programs, Commission on

August 31
Contractors, Board for
- Regulatory/Statutory Review Committee
† Environmental Quality, Department of
† Medical Assistance Services, Board of
† Nursing, Board of

September 1
Compensation Board
† Conservation and Recreation, Department of
Medicine, Board of
- Advisory Board on Occupational Therapy
† Nursing, Board of

September 2
† Intercommunity Transition Council, Virginia
† Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board
† Nursing, Board of
Voluntary Formulary Board, Virginia

September 3
Medicine, Board of
- Legislative Committee

September 7
† Game Protection Fund, Joint Subcommittee Studying
† Interdepartmental Regulation of Children's Residential Facilities, Coordinating Committee for
Workforce and Its Compensation, Personnel, and Management Policies and to Recommend Improvements to Virginia System, Joint Commission to Study Management of the Commonwealth's

September 8
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Land Surveyors
† Environmental Quality, Department of
† Funeral Directors and Embalmers, Board of
† Health Professions, Department of
† Housing Development Authority, Virginia
Land Evaluation Advisory Council, State
† Real Estate Board

September 9
Conservation and Recreation, Board of
Conservation and Recreation, Department of
Historic Resources, Department of
† Medicine, Board of
Soil and Water Conservation Board, Virginia
† Youth and Family Services, Board of

September 10
† Youth and Family Services, Board of

September 13
† Alcoholic Beverage Control Board
Hearing Aid Specialists, Board for
Higher Education for Virginia, State Council of
Library Board

September 14
Higher Education for Virginia, State Council of
† Medicine, Board of
† Psychology, Board of

September 15
Historic Resources, Department of
- Board of Historic Resources and State Review
Local Debt, State Council on
† Solid Waste Management and Recycling Needs, Joint Subcommittee Studying
† Transportation Board, Commonwealth
Treasury Board
† Virginia Code Commission

September 16
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Architects
† Labor and Industry, Department of
- Apprenticeship Council
Sales Tax Exemptions, Select Committee on
† Transportation Board, Commonwealth
Water Control Board, State

September 17
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Interior Designers
Medicine, Board of
- Advisory Board on Physical Therapy

September 20
Emergency Planning Committee, Local - Prince William County, Manassas City, and Manassas Park City
Professional Soil Scientists, Board for

September 21
Contractors, Board for
- Recovery Fund Committee
Museum of Fine Arts, Virginia
- Collections Committee
† Nursing, Board of
Polygraph Examiners Advisory Board

September 22
† Historic Preservation Foundation, Virginia
† Interagency Coordinating Council Early Intervention, Virginia
Maternal and Child Health Council
† Nursing, Board of

September 23
Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Mapping, Surveying and Land Information Systems, Advisory Committee on
Medical Assistance Services, Department of
- Drug Utilization Review Board
Museum of Fine Arts, Virginia
- Finance Committee
- Board of Trustees
† Nursing, Board of
† Rehabilitative Services, Board of
† Waterworks and Wastewater Works Operators, Board for

September 24
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
† Nursing, Board of
† Social Work, Board of

September 27
Local Government, Commission on
† Lottery Department, State
† Water Control Board, State

September 28
Local Government, Commission on
† Soil and Water Conservation Board, Virginia
† Water Control Board, State

September 29
† Agriculture and Consumer Services, Board of
† Alcoholic Beverage Control Board
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
† Water Control Board, State

September 30
† Dentistry, Board of
† Social Work, Board of
† Water Control Board, State

October 1
† Dentistry, Board of
† Social Work, Board of

October 2
† Dentistry, Board of

October 7
† Medicine, Board of
† Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board

October 8
† Medicine, Board of
- Credentials Committee

October 9
† Medicine, Board of

October 10
† Medicine, Board of

October 12
Opticians, Board for
† Resources Authority, Virginia

October 13
† Alcoholic Beverage Control Board

October 14
† Youth and Family Services, Board of

October 15
† Interdepartmental Regulation of Children's Residential Facilities, Coordinating Committee for

October 20
† Virginia Code Commission

October 25
† Alcoholic Beverage Control Board

October 26
† Health Services Cost Review Council, Virginia

November 4
Local Government, Commission on

November 8

† Alcoholic Beverage Control Board

November 9
† Resources Authority, Virginia

November 22
† Alcoholic Beverage Control Board

PUBLIC HEARINGS

August 24
† Financial Impact of Third Party Reimbursement on the Commonwealth's Pharmacies, Joint Subcommittee to Study the
Health, Board of

August 25
Veterans' Affairs, Board on

August 26
† Human Immunodeficiency Viruses, Joint Subcommittee to Study

August 27
† Joint Subcommittee to Study Ways to Improve the Registration and Electoral Process and Encourage Voter Participation

September 8
Joint Subcommittee to Study Ways to Improve the Registration and Electoral Process and Encourage Voter Participation

September 14
† Medicine, Board of
† Psychology, Board of

September 27
Local Government, Commission on

September 29
Criminal Justice Services, Department of

October 6
Criminal Justice Services, Department of