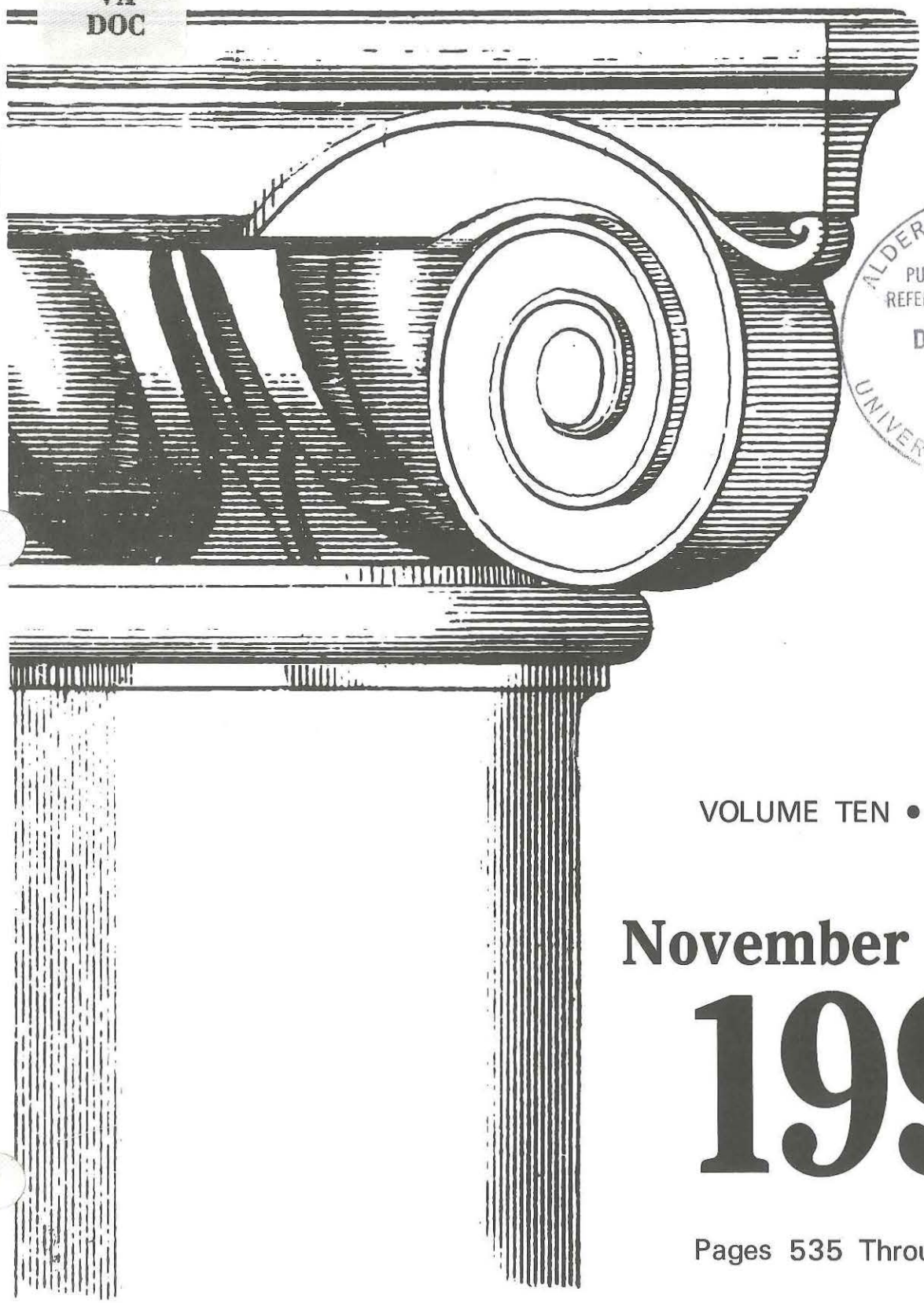
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME TEN • ISSUE FOUR

November 15, 1993

1993

Pages 535 Through 986

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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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 amending regulations entitled: **VR 105-01-02. Board for Accountancy Regulations.** The Board for Accountancy will review its regulations for promulgation, amendment, and repeal and will also review its fees as is deemed necessary in its mission to regulate public accountancy in Virginia. The agency does not intend to hold a public hearing on the proposed amendments to the regulations.

Statutory Authority: § 54.1-201.5 of the Code of Virginia.

Written comments may be submitted until December 15, 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. R94-109; Filed October 25, 1993, 2:20 p.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-02. Rules and Regulations Governing the Prevention, Control, and Eradication of Bovine Tuberculosis in Virginia.** The purpose of the proposed regulation is to review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions to require testing and subjecting to other requirements within the regulation of (a) all classes of bovidae (not just cattle), (b) all cervidae (many of the deer), and (c) all capridae (goats); (ii) considering alternative ways of disposing of tuberculosis-infected animals; (iii) a proposal to shorten the time in which a report must be made to the State Veterinarian when tuberculosis is suspected; (iv) requiring owners of cervidae to maintain records for three years to include: (a) owners name and address, (b) individual identification of each animal to include species, (c) name and address of where the animal was purchased, (d) date of purchase, (e) date and to whom the animal was sold, and (f) date and results of any official tests performed; and (v) requiring dealers in livestock/exotic species to register with the State Veterinarian's office. 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.

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

Written comments may be submitted until 8:30 a.m. on December 6, 1993, to Dr. W. M. Sims, Jr., VDACS-Division of Animal Health, P.O. Box 1163, Richmond, VA 23209-1163.

Contact: T. R. Lee, Program Supervisor, 1100 Bank Street, P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-2483.

VA.R. Doc. No. R94-77; Filed October 8, 1993, 4:21 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-02-12. Rules and Regulations Pertaining to the Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds in Virginia.** The purpose of this regulation is to review the regulation for effectiveness and continued need, including but not limited to: (i) adding provisions governing the importation of cervidae–most varieties of deer; (ii) repealing provisions requiring a permit for the importation of psittacine (parrot-like) birds and repealing provisions requiring that they be treated for psittacosis; (iii) repealing provisions requiring South American camelids of the genus Lama to be tested for bluetongue; (iv) requiring rabies vaccination for cats entering the Commonwealth; (v) adding importation requirements for bison, to treat them more consistently with cattle; and (vi) relaxing certain requirements pertaining to feeder cattle. 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.

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

Written comments by be submitted until 8:30 a.m. December 6, 1993, to Dr. W. M. Sims, Jr., VDACS-Division of Animal Health, P.O. Box 1163, Richmond, VA 23209-1163.

Contact: T. R. Lee, 1100 Bank Street P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-3539.

VA.R. Doc. No. R94-78; Filed October 8, 1993, 4:20 p.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 promulgating regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Acid Rain Operating Permits–Revision PP).** The purpose of the proposed action is to develop a regulation to meet the operating permit requirements contained in Titles IV and V of the Clean Air Act, as amended in November 1990, for sources of the pollutants that produce acid rain.

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 December 1, 1993, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by close of business October 22, 1993, and provide your name, address, telephone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants. If you are selected to be on the group, you are encouraged to attend the public meeting and any subsequent meetings that may be needed to develop the draft regulation. The primary function of the group is to develop recommended regulation amendments for department consideration through the collaborative approach of regulatory negotiation and consensus.

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 IV of the Clean Air Act (the Act) as amended November 1990 requires the U.S. Environmental Protection Agency (EPA) to establish a program to reduce nationwide emissions of the primary causes of acid rain, sulfur dioxide (SO2) and nitrogen oxides (NOx). The burning of fossil fuels, particularly coal and oil, releases emissions of these chemicals into the atmosphere. Various chemical reactions may then take place, resulting in sulfate, nitrate, sulfuric acid and nitric acid emissions. These newly transformed compounds will then be deposited near the facilities which emitted them or be transported hundreds of miles. They can be deposited in either a dry form (as a gas, aerosol, or particle) or a wet form (in rain, fog or snow). This acidic deposition results in acidification of streams and lakes which then cannot support fish life, damage to trees and forest ecosystems in general at higher elevations, decrease in visibility, damage to historic buildings, statues, and sculptures, and acceleration of the decay of building materials and paints. Acidic deposition in the form of acidic aerosols may also pose a threat to human health.

The major contributions of SO2 and NOx in the atmosphere come from emissions of electric utilities. Throughout the nation as of 1985, 70% of SO2 emissions and 37% of NOx emissions came from electric utilities. Reducing the total level of SO2 and NOx emissions below present levels will reverse the effects of acidic deposition previously described, prevent the damage caused by these emissions from increasing, and reduce the costs of the damage in future years.

Title V of the Act provides a mechanism to implement the various requirements under the other titles in the Act, including the acid rain provisions of Title IV, through the issuance of operating permits. Under this title, the 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 department is completing work on the development of a separate operating permit regulation for all sources subject to Title V except those sources emitting pollutants that produce acid rain.

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.

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.

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.

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. Affected sources as defined under the acid rain provisions of Title IV of the Act are one of the source categories required to be covered under the provisions of any Title V program. The federal regulations carrying out Title V, 40 CFR Part 70, require that the following elements either be included in operating permit programs developed by the states or considered in the development of those programs:

1. Major sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, lead, and hazardous air pollutants must be subject to the regulation. Nonmajor sources that are regulated under Section 111 of the Act, New Source Performance Standards, and Section 112 of the Act, National Emission Standards for Hazardous Air Pollutants, must be subject to the regulation but can be deferred from initial permitting. Sources subject to the requirements of the acid rain program under Title IV of the Act must be covered under the regulation.

2. The applicant must identify all federal and state requirements applicable to the source and describe emissions of all regulated pollutants from emissions units at the source. The department must verify this information and set terms and conditions in the permit concerning the applicable requirements.

3. The applicant must submit a compliance plan, schedule and certification with the application addressing requirements that have been met and those that have not been met.

4. The permitting authority may provide a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable.

5. The permitting authority must provide an application shield for sources that submit timely and complete applications.

6. The permitting authority must allow the public and affected states to review the draft permit developed by the permitting authority. The permitting authority may allow public hearings to be held in addition to providing an opportunity for public comment. After review of the comments and the development of a proposed final permit, the proposed permit must be sent to EPA. The permitting authority must allow EPA 45 days to review the permit during which time it can object to the permit.

7. The permitting authority must provide in its regulation several mechanisms to modify the permit.

8. The permitting authority may provide 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.

Section 408 of Title IV covers the permit and compliance plan requirements for affected sources, those stationary sources that have at least one emission unit emitting air pollutants which cause acid rain. Section 408(a) states that the requirements of Title IV are to be implemented by permits issued to affected sources in accordance with Title V, as modified by the requirements of Title IV. Any permit issued to an affected source must prohibit all of the following:

1. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that is held for the source. An allowance is the authorization to emit one ton of sulfur dioxide during or after a specified calendar year.

2. Exceedances of applicable emissions rates.

3. The use of any allowance prior to the year for which it was allocated.

4. Contravention of any other provision of the permit. Permits must be issued for a period of five years. No permit can be issued that is inconsistent with the applicable requirements of Titles IV and V.

Section 408(b) requires that compliance plans be submitted

with each permit application. Alternative methods of compliance may be authorized by permitting authorities; however, a comprehensive description of the schedule and means by which the unit will rely on one or more of these alternative methods must be provided by the applicant. Any transfers of allowances recorded by EPA will automatically amend all applicable proposed or approved permit applications, compliance plans and permits. EPA may also require a demonstration of attainment of national ambient air quality standards for a source or, from the owner of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance.

Section 408(d) describes the requirements for Phase II permits, those to be issued by states with EPA-approved Title V programs. The owners of sources subject to Phase II of Title IV must submit their permit applications and compliance plans by January 1, 1996, to the state permitting authority. The states with approved programs must issue the permits no later than December 31, 1997. Permit applications and compliance plans that have been received by January 1, 1996, are binding and are enforceable as a permit for purposes of Titles IV and V until a permit is issued by the permitting authority.

Section 408(e) covers new sources or emissions units, those that commence commercial operation on or after November 15, 1990. New sources must submit a permit application and compliance plan to the permitting authority no later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the source commences operation. The permitting authority must issue a permit to a new source if the requirements of Titles IV and V are satisfied.

Section 408(f) covers stationary sources or emissions units subject to nitrogen oxides requirements. Applications and compliance plans must be submitted to permitting authorities no later than January 1, 1998. The permitting authority must issue a permit to these sources or emissions units if the requirements of Titles IV and V are satisfied.

Section 408(g) allows the applicant to submit a revised application and compliance plan at any time after the initial submission. Section 408(h) states that it is unlawful for an owner or designated representative of the owner to fail to submit applications and compliance plans in the time period required by Title IV or to operate any affected source except in compliance with the terms and conditions of a permit and compliance plan issued by EPA or an approved permitting authority. Section 408(h)(3) prohibits shutdown of an electric utility steam generating unit for failure to have an approved permit or compliance plan. However, the unit may be subject to applicable enforcement provisions under section 113 of the Act.

Section 408(i) requires that no permit can be issued to an affected source until the designated representative has filed a certificate of representation with regard to the requirements of Title IV, including the holding and distribution of allowances. This section also describes the requirements for certification of representation when there are multiple holders of a legal or equitable title to, or leasehold interest in, an affected unit or when a utility or industrial customer purchases power from an affected unit under life-of-the-unit, firm power contractual arrangements.

The regulation carrying out the requirements of Section 408 of Title IV, 40 CFR Part 72, and EPA guidance on Part 72 stipulates specific requirements for affected sources that are different from the requirements of 40 CFR Part 70. The differences include, but are not limited to, the following:

1. Only a designated representative or alternative designated representative of the source owner is authorized to make permit applications and other submissions under the Title IV requirements and must file a certificate of representation with EPA before they can assume these responsibilities. (40 CFR 72, Subpart B.)

2. The state permitting authority must allow EPA to intervene in any appeal of an acid rain permit. (40 CFR Part 72, § 72.72(5)(iv).)

3. The period by which the acid rain portion of an operating permit can be appealed administratively is 90 days. Judicial appeal of an acid rain portion of a permit cannot occur over 90 days. (40 CFR Part 72, § 72.72(5)(ii).)

4. An application is binding and enforceable as a permit until the permit is issued. (40 CFR Part 72, § 72.72(b)(1)(i)(B).)

5. The acid rain portion of an operating permit must be covered by a permit shield. (40 CFR Part 72, § 72.51.)

6. The acid rain rules allow for four different types of permit revisions. Two of these are the same as those provided for in 40 CFR Part 70: permit modifications and administrative amendments. The other two are unique to the acid rain program: fast-track modifications and automatic amendments. (40 CFR Part 72, Subpart H.)

7. In general, permits are issued using Part 70 procedures. However, there are some exceptions. For instance, within 10 days of determining whether an acid rain application is complete, the permitting authority must notify EPA of that determination. The permitting authority must also notify EPA of any state or judicial appeal within 30 days of the filing of the appeal. (40 CFR Part 72, §§ 72.72(b)(1)(i)(C) and 72.72(b)(5)(iii).)

Alternatives: As discussed below, there are three available alternatives that can be considered:

1. Develop a regulation to meet the operating permit requirements of Titles IV and V of the Act and the federal regulations implementing those requirements. This alternative would result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain. The department would have the authority and responsibility to review and to determine the approvability of operating permits for these sources in Virginia. The revenue from emissions fees charged to these sources would be used to fund the department's operating permit program.

2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. Depending on the differences between the required provisions and the alternatives chosen, this option might or might not result in the approval by EPA of the Title V program for sources of air pollutants that cause acid rain.

3. Take no action to amend the regulations. This al0ernative would result in the disapproval by EPA of the Title V program for sources of air pollutants that cause acid rain. Furthermore, EPA may choose to sanction the state for failing to develop this requirement of the Title V program. EPA may choose to sanction a state by withholding funds for highway projects, by requiring additional offsets be provided by new or modifying sources in nonattainment areas or both. EPA might also take over that portion of the operating permit program concerning the sources of air pollutants causing acid rain, issuing permits, charging emissions fees and retaining those fees.

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

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

Written comments may be submitted until December 3, 1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

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

VA.R. Doc. No. C94-48; Filed September 15, 1993, 9:40 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 promulgating regulations entitled: **Continuing Education Requirements for Land Surveyors.** The purpose of the proposed action is to consider continuing education requirements for regulants and any related regulatory issue proposed by the board or the public. The board will hold a hearing on November 30, 1993, at 2 p.m. at the Department of Occupational and Professional Regulation, 3600 W. Broad Street, Richmond, Virginia 23230. The board does not intend to hold a public hearing during the 60-day comment period.

Statutory Authority: §§ 54.1-200 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until December 3, 1993.

Contact: Willie Fobbs, Board Administrator, Department of Occupational and Professional Regulation, 3600 W. Broad Street, Richmond, Virginia 23230, telephone (804) 367-8514.

VA.R. Doc. No. R94-90; Filed October 13, 1993, 11:58 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. Regulations for the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects.** The purpose of the proposed action is to consider professional entry requirements, professional responsibility and standards of conduct, and any regulatory issue proposed by the board or public. The board does not intend to hold a public hearing after publication of the proposed regulation.

Statutory Authority: §§ 54.1-200 and 54.1-404 of the Code of Virginia.

Written comments may be submitted until December 3, 1993.

Contact: Willie Fobbs, Board Administrator, Department of Occupational and Professional Regulation, 3600 W. Broad Street, Richmond, Virginia 23230, telephone (804) 367-8514.

VA.R. Doc. No. R94-91; Filed October 13, 1993, 11:58 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 amending regulations entitled: **VR 170-01-1:1. Board for Barbers Regulations.** The Board for Barbers will review its regulations, including its fees, for promulgation, amendment, and repeal as is deemed necessary in its mission to regulate Virginia barber

regulants. The agency does not intend to hold a public hearing on the proposed amendments to the regulations after publication.

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

Written comments may be submitted until December 15, 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. R94-108; Filed October 25, 1993, 2:20 p.m.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider amending regulations entitled: **VR 230-30-001. Minimum Standards for Jails and Lockups.** The purpose of the proposed action is to review and amend the minimum standards for the administration of and programs in jails and lockups. Notices of intent to promulgate regulations VR 230-30-001:1 were published June 14, 1993, and October 4, 1993; however, the Board of Corrections wishes to amend its existing regulations instead of promulgating new ones. By filing this notice, the Board of Corrections withdraws those initial two Notices of Intent. A public hearing will be held on the proposed amendments 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 53.1-131 of the Code of Virginia.

Written comments may be submitted until December 15, 1993.

Contact: Lou Ann White, Certifications Supervisor, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3268.

VA.R. Doc. No. R94-175; Filed October 27, 1993, 9:20 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 Corrections intends to consider promulgating regulations entitled: **VR 230-30-009. Day Reporting Center Regulations.** The purpose of the proposed action is to establish regulations governing the operation of day reporting centers. A public hearing will be held on the proposed regulations after publication. The date, time and location of the hearing will be published at a later date.

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

Written comments may be submitted until December 2, 1993.

Contact: R. M. Woodard, Department of Corrections, Division of Community Corrections, Regional Program Manager, 302 Turner Road, Richmond, VA 23225, telephone (804) 674-3732.

VA.R. Doc. No. R94-71; Filed October 7, 1993, 3:26 p.m.

BOARD OF DENTISTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider amending regulations entitled: **VR 255-01-1. Board of Dentistry Regulations.** The purpose of the proposed action is to adjust fees, provide a grace period for licensure, provide for interstate mobility for dentists, eliminate retention of insurance records, regulate the advertisement of specialists, establish continuing education requirements, regulate the use of professional designations, and clarify existing regulations. The board will hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2700 et seq. of the Code of Virginia.

Written comments may be submitted until December 2, 1993.

Contact: Marcia Miller, Executive Director, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

VA.R. Doc. No. R94-81; Filed October 8, 1993, 3:03 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Dentistry intends to consider promulgating regulations entitled: **VR 255-01-2. Public Participation Guidelines.** The purpose of the proposed action is to replace the emergency public participation guidelines with permanent regulations to comply with the Administrative Process Act. The agency does not intend to hold a public hearing on the proposed regulations after publication.

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

Written comments may be submitted until December 2, 1993.

Contact: Marcia Miller, Executive Director, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

VA.R. Doc. No. R94-82; Filed October 8, 1993, 3:02 p.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 275-00-01. Guidelines for the Development and Promulgation of Regulations.** The purpose of the proposed action is to finalize emergency regulations and address methods for the identification and notification of interested parties, and any specific means of seeking input from persons or groups as part of the process of adopting, amending or repealing regulations. The State Education Assistance Authority does not intend to hold a public hearing on the proposed regulations after publication.

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

Written comments may be submitted until December 1, 1993, to Marvin L. Ragland, Jr., 411 E. Franklin St., Richmond, VA 23219.

Contact: Sherry Scott, Policy Analyst, 411 E. Franklin St., Richmond, VA 23219, telephone (804) 775-4071 or toll-free 1-800-937-0032.

VA.R. Doc. No. R94-72; Filed October 8, 1993, 11:43 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 repealing regulations entitled: **VR 270-01-0037. Regulations Governing Public School Building Construction.** The purpose of the proposed action is to repeal existing regulations so that new standards for the erection of or addition to public school buildings may be promulgated. The Department of Education will hold public hearings on these proposed regulations according to Administrative Process Act requirements.

Statutory Authority: §§ 22.1-6 and 22.1-138 of the Code of Virginia.

Written comments may be submitted until December 1, 1993.

Contact: David L. Boddy, Director of Facilities, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2035.

VA.R. Doc. No. R94-80; Filed October 8, 1993, 2:59 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: **VR 270-01-0060. Minimum Standards for the Accreditation of Child Day Programs Serving Children of Preschool Age or Younger in Public Schools.** The purpose of the proposed action is to set minimum standards for the accreditation of preschool age or younger programs operated by local school divisions in Virginia. Provisions of the Code of Virginia regarding the licensure of child day centers/programs have been amended to require board action regarding day care programs run by the public schools (e.g., before- and after-school programs, four-year-old programs, vocational education programs). Specifically, the legislation requires the Board of Education to incorporate into the Standards of Accreditation the regulations for day care centers issued by the Child Day Care Council. The department has agreed to adopt these regulations with the stipulation that any changes to be made will strengthen requirements, not weaken them. To implement this requirement the department established a 12-member team of professionals with expertise in child day programs and regulatory matters from the department, local school divisions, accredited private schools, and the Department of Social Services. This core team solicited input from other pertinent individuals within the department and from local school divisions and developed proposed regulations to meet the requirements of law. The board will hold public hearings on these regulations during the public comment period.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Written comments may be submitted until December 1, 1993.

Contact: Charles W. Finley, Associate Specialist, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

VA.R. Doc. No. R94-73; Filed October 8, 1993, 10:54 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 270-01-0061. Minimum Standards for the Accreditation of Child Day Care Programs Serving School Age Children Offered in Public Schools.** The purpose of the proposed action is to set minimum standards for the accreditation of school age programs operated by local school divisions in Virginia. Provisions of the Code of Virginia regarding the licensure of child day centers/programs have been amended to require board action regarding day care programs run by the public schools (e.g., before- and after-school programs, four-year-old programs, vocational education programs).

Specifically, the legislation requires the Board of Education to incorporate into the Standards of Accreditation the regulations for day care centers issued by the Child Day Care Council. The department has agreed to adopt these regulations with the stipulation that any changes to be made will strengthen requirements, not weaken them. To implement this requirement the department established a 12-member team of professionals with expertise in child day programs and regulatory matters from the department, local school divisions, accredited private schools, and the Department of Social Services. This core team solicited input from other pertinent individuals within the department and from local school divisions and developed proposed regulations to meet the requirements of law. The board will hold public hearings on these regulations during the public comment period.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Written comments may be submitted until December 1, 1993.

Contact: Charles W. Finley, Associate Specialist, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

VA.R. Doc. No. R94-76; Filed October 8, 1993, 10:54 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: **Regulations of School Building Construction.** The purpose of the proposed action is to develop standards for the erection of or addition to public school buildings governing instructional, operational, health and maintenance facilities where these are not specifically addressed in the Uniform Statewide Building Code. The Department of Education will hold public hearings on these proposed regulations according to Administrative Process Act requirements.

Statutory Authority: §§ 22.1-16 and 22.1-138 of the Code of Virginia.

Written comments may be submitted until December 1, 1993.

Contact: David L. Boddy, Environmental Technical Services Administrator, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2035.

VA.R. Doc. No. R94-79; Filed October 8, 1993, 2:59 p.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 amending regulations entitled: **VR 325-04-2. Motorboat Numbering.** The purpose of the proposed action is to bring the agency's boat registration and titling process into compliance with § 58.1-3511 of the Code of Virginia which establishes the situs for the assessment of motorboats for personal property taxation assessment purposes and with the Soldiers' and Sailor's Civil Relief Act (50 U.S.C.A. App. 574) which provides certain exemptions to personal property taxation assessments for individuals on active military duty.

Basis and Statutory Authority: The basis for this regulation is § 29.1-701 E of the Code of Virginia which authorizes the board to adopt rules and procedures for the implementation of the provisions of Chapter 7 of Title 29.1 of the Code of Virginia, entitled "Boating Laws."

Substance and Purpose: The purpose of this proposed regulatory action is to amend the board's regulations governing motorboat registration and informational requirements. Specifically, the intent of the suggested changes is to require individuals to identify on the motorboat registration and titling application form the county where the motorboat will be "normally garaged, docked, or parked" and to require individuals to notify the department when they are no longer on active military duty within the Commonwealth of Virginia.

Section 58.1-3511 of the Code of Virginia requires commissioners of revenue to assess for personal property taxation purposes motorboats based on where the boats are "normally garaged, docked, or parked." Reports submitted to the commissioners of revenue currently indicate boat registrations based on "locality of principal use." The first change will enable the department to gather the information necessary to report boat registrations in compliance with § 58.1-3511.

The Soldiers' and Sailor's Civil Relief Act (Act) provides certain exemptions from local personal property taxation assessments for individuals who are on active military duty. The department does not now ask an individual to indicate their military status at the time an application is submitted for a motorboat registration. The agency has been requested by representatives of the commissioners of revenue to collect that information and report it to them annually. Such reporting will enable the commissioners to provide the assessment relief envisioned by the Act without requiring their constituents to complete additional paperwork at the local level. While the agency can comply with the reporting request of the commissioners of revenue without regulatory action, the agency does not currently have the authority to require individuals to notify the agency in the event there is a change in military status. Since boat registrations are valid for 3-year periods, such authority is needed to enable the agency to ensure the accuracy of the reports sent to the commissioners.

Estimated Impact: It is expected that this proposal will have a financial impact on both the regulated public and local governments. Because boats are presently reported to the commissioners of revenue based on the locality of principal use, many individuals live in one locality but pay personal property taxes on their boats in another county. By changing the reporting basis to the locality where the boat is normally garaged, docked, or parked, individuals will be more likely to pay personal property taxes where they live than where they use their boats. This will cause some individual's tax payments to go down and others to go up. There will also be a realignment of personal property tax revenues among the various localities. No data is available to quantify either of these potential impacts.

Alternatives: No other alternative to the first action is available. The agency is not now in compliance with state law governing information provided to the commissioners of revenue for personal property taxation assessment purposes and cannot come into compliance without the suggested action. The agency does have the option to not solicit information regarding military status on the registration application form. Not doing so, however, will require commissioners of revenue to continue incurring additional workloads to accommodate individuals on active military status as provided under federal law. Both of these actions have been discussed with and endorsed by the commissioners of revenue.

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 hold a public meeting at 9 a.m. on Friday, December 3, 1993, in the Main Conference Room of the Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, Virginia 23230, 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. Jamerson in writing at the address below or by telephone at (804) 367-1000 (V / TDD). Persons needing interpreter services for the deaf must notify Ms. Jamerson no later than Friday, November 19, 1993.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold a public hearing (informational proceeding) on the proposed amendments after the proposal is published in The Virginia Register of Regulations as provided under the agency's Public Participation Guidelines. This informational proceeding may be convened by a member of the board. The board does not intend to hold a formal hearing on the proposed amendments after the proposal is published in The Virginia Register of Regulations.

Statutory Authority: § 29.1-701 E of the Code of Virginia.

Written comments may be submitted until December 15, 1993, to Nancy Jamerson, Department of Game and Inland Fisheries, P.O. Box 11104, Richmond, Virginia 23230.

Contact: Mark D. Monson, Chief, Administrative Services, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000.

VA.R. Doc. No. R94-177; Filed October 27, 1993, 9:37 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 amending regulations entitled: **VR 325-04-1. Watercraft: In General.** The purpose of the proposed action is to amend § 1 to adopt state boating safety regulations in conformance with U.S. Coast Guard regulations, pertaining to safety equipment requirements for commercial fishing vessels, thereby eliminating enforcement conflicts. These amended regulations would apply to vessels which are engaged in activities which are pursuant to the harvesting or processing of fish for commercial purposes. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 29.1-735 of the Code of Virginia.

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

Contact: Jeffrey A. Uerz, Chief, Law Enforcement Division, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

VA.R. Doc. No. R94-176; Filed October 27, 1993, 9:37 a.m.

BOARD FOR GEOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Geology intends to consider amending regulations entitled: **VR 335-01-2. Rules and Regulations for the Virginia Board of Geology.** The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia and review the entire regulation to consider any amendments which may be necessary. The agency does not intend to hold a public hearing on the proposed amendments to this regulation after publication.

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-1402 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, Board for Geology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 376-8595.

VA.R. Doc. No. R94-27; Filed September 21, 1993, 11:56 a.m.

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 repealing regulations entitled: **VR 355-19-05. Rules and Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption.** The purpose of the proposed action is to replace current regulations with updated regulations. The agency will hold a public hearing on the repeal of the regulations after publication.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until December 16, 1993.

Contact: Robert J. Wittman, Deputy Director, 1500 E. Main St., Room 109-31, Richmond, VA 23219, telephone (804) 786-7937.

VA.R. Doc. No. R94-101; Filed October 20, 1993, 1:32 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 Health intends to consider repealing regulations entitled: **VR 355-19-06. Rules and Regulations for the Sanitary Control of Oysters, Clams and Other Shellfish.** The purpose of the proposed action is to replace current regulations with updated regulations. The agency will hold a public hearing on the repeal of the regulations after publication.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until December 16, 1993.

Contact: Robert J. Wittman, Deputy Director, 1500 E. Main St., Room 109-31, Richmond, VA 23219, telephone (804) 786-7937.

VA.R. Doc. No. R94-102; Filed October 20, 1993, 1:32 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 Health intends to consider promulgating regulations entitled: **VR 355-19-500. Shellfish and Crustacea Sanitation Regulations.** The purpose of the proposed action is to provide up-to-date and comprehensive regulations governing Virginia's compliance with the National Shellfish Sanitation Program. These regulations will replace two existing regulations proposed to be repealed: VR 355-19-05, Rules and Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption, and VR 355-19-06, Rules and Regulations Governing the Sanitary Control of Oysters, Clams and Other Shellfish. The agency will hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 28.2-801 of the Code of Virginia.

Written comments may be submitted until December 16, 1993.

Contact: Robert J. Wittman, Deputy Director, 1500 E. Main St., Room 109-31, Richmond, VA 23219, telephone (804) 786-7937.

VA.R. Doc. No. R94-100; Filed October 20, 1993, 1:32 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 Health intends to consider amending regulations entitled: **VR 355-30-109. Virginia State Medical Facilities Plan: Diagnostic Imaging Services.** The purpose of the proposed action is to amend the criteria and standards for Single Photon Emission Computed Tomography (SPECT) to expedite the Certification of Public Need review process. The agency intends to hold a public hearing on the proposed regulations after publication.

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

Written comments may be submitted until December 15, 1993.

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

VA.R. Doc. No. R94-179; Filed October 27, 1993, 11:04 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 355-40-500. Rules and Regulations for the Identification of Medically Underserved Areas of Virginia.** The purpose of the proposed action is to review the current system for designating medically underserved areas. These areas identify potential practice sites for

physicians or nurse practitioners who receive Virginia scholarships while students. The board intends to hold a public hearing during the comment period following publication of any proposed revisions.

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

Written comments may be submitted until December 16, 1993.

Contact: E. George Stone, Director, Office of Primary Care Development, Department of Health, 1500 E. Main St., P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-4891.

VA.R. Doc. No. R94-178; Filed October 27, 1993, 11:04 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: **Amount, Duration, and Scope of Services: Coverage Limits for Single Antigen Vaccines.** The purpose of the proposed action is to promulgate permanent regulations, to supersede the existing emergency regulation, to provide for only a restricted coverage of single antigen vaccines to conform to the federal restriction. The regulations will provide medically necessary exceptions to be covered. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until December 1, 1993, to Craig Burns, 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. R94-75; Filed October 6, 1993, 3:44 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: **Assisted Living Services for Individuals Residing in Adult Care Residences.** The purpose of the proposed action is to define the criteria for reimbursement to adult care residences providing regular and intensive assisted living services to individuals receiving auxiliary grant payments, subsequent to implementation of this program by the General Assembly. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until December 15, 1993, to Chris Pruett, Manager, Community Based Care Services, 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. R94-94; Filed October 18, 1993, 3:23 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: **Case Management Services: Auxiliary Grant Recipient Case Management.** The purpose of the proposed action is to adopt regulations regarding case management for recipients of auxiliary grants who are residing in licensed adult care residences. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until December 15, 1993, to Ann E. Cook, 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. R94-99; Filed October 20, 1993, 3:25 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: **Cost Sharing and Similar Charges: Discontinue Recipient Copayments on Dialysis Services.** The purpose of the proposed action is to discontinue charging recipients for copayments when they are receiving dialysis services. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 3, 1993, to Wayne Kitsteiner, Division of Client Services, 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. C94-54; Filed September 15, 1993, 11:24 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: **Criteria for Preadmission Screening and Continued Stay.** The purpose of the proposed action is to revise the definition of medical/nursing need and the evaluation of persons seeking community-based care to avoid future nursing facility placement. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 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. C93-2079; Filed August 13, 1993, 2:47 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, Home Health Reimbursement; Methods and Standards for Establishing Payment Rates-Long Term Care; Home Health Agency Reimbursement; Nursing Facility Criminal Record Checks.** The purpose of the proposed action is to revise home health agency methodologies, to revise regulations to reimburse providers for the costs of obtaining criminal record background checks on nursing facility employees. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 5, 1993, to Vicki Simmons, 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. C93-2078; Filed August 13, 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 Board of Medical Assistance Services intends to consider amending regulations entitled: **Methods and Standards for Establishing Payment Rates–Inpatient Hospital Care: NICU and GME.** The purpose of the proposed action is to clarify the department's existing reimbursement policies for neonatal intensive care units (NICU) and graduate medical education (GME). The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 17, 1993, to Peterson A. Epps, 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. R94-28; Filed September 21, 1993, 3:15 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 System: Blood Borne Pathogens.** The purpose of the proposed action is to amend the Nursing Home Payment System to reimburse nursing facilities for the costs of complying with OSHA requirements for protecting employees against exposure to blood. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until December 1, 1993, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

VA.R. Doc. No. R94-74; Filed October 6, 1993, 3:43 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: **Liens and Recoveries.** The purpose of the proposed action is to permit the department to place liens against the real property of Medicaid recipients in accordance with § 63.1-133.1 of the Code of Virginia, and with the Code of Federal Regulations at 42 CFR 433.36. The agency does not intend to hold a public hearing on this regulatory action after publication.

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

Written comments may be submitted until November 17, 1993, to Rudy Brown, Fiscal Division, 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. R94-24; Filed September 17, 1993, 10:34 a.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 amending regulations entitled: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend §§ 2 through 7 pertaining to limited licensees and their application for obtaining full licensure. The agency does not intend to hold a public hearing on the proposed regulation unless requested.

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

Written comments may be submitted until November 22, 1993, to Hilary H. Connor, M.D., 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

Contact: Russell D. Porter, Assistant Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908.

VA.R. Doc. R94-41; Filed September 24, 1993, 3:40 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 485-10-7701. Privacy Protection Act Rules and Regulations.** The purpose of the proposed action is to enhance customer services. A public hearing on the proposed regulation will be held after the proposed regulation is published.

Statutory Authority: § 46.2-208 of the Code of Virginia.

Written comments may be submitted until November 22, 1993.

Contact: Judy Vesely, Policy Analyst, Department of Motor Vehicles, 2300 W. Broad St., Room 321, Richmond, VA 23220, telephone (804) 367-0130.

VA.R. Doc. No. R94-29; Filed September 23, 1993, 2:19 p.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Pharmacy intends to consider amending regulations entitled: **VR 530-01-1. Regulations of the Virginia Board of Pharmacy.** The purpose of the proposed action is to consider amendments to regulations to include the following issues: satellite pharmacies in hospitals, pharmacy technicians, elements of a prescription, and compounding of sterile products. A public hearing will be held after publication of the proposed regulations.

Statutory Authority: §§ 54.1-2400, 54.1-3307, 54.1-3404 and 54.1-3434 of the Code of Virginia.

Written comments may be submitted until November 18, 1993.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911.

VA.R. Doc. No. R94-62; Filed September 28, 1993, 4:59 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Pharmacy intends to consider promulgating regulations entitled: **VR 530-01-3. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter, as the board plans to adopt without changing the emergency regulations currently in effect.

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

Written comments may be submitted until November 18, 1993.

Contact: Scotti W. Milley, Executive Director, Virginia

Board of Pharmacy, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9911.

VA.R. Doc. No. R94-63; Filed September 28, 1993, 4:59 p.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 amending regulations entitled: **VR 190-01-1:1. Regulations Governing Employment Agencies.** The Employment Agencies Program will review its regulations, including fees, for promulgation, amendment, and repeal as is deemed necessary in its mission to regulate Virginia employment agencies regulants. The agency does not intend to hold public hearing on the proposed amendments after publication.

Statutory Authority: § 54.1-1302 of the Code of Virginia.

Written comments may be submitted until December 15, 1993.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

VA.R. Doc. No. R94-107; Filed October 25, 1993, 2:20 p.m.

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 amending regulations entitled: **VR 190-03-1. Polygraph Examiners 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 (fee analysis) in accordance with its public participation guidelines and § 54.1-110 of the Code of Virginia. The agency intends to hold a public hearing on the proposed regulation after publication, during the comment period.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 19, 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. R94-42; Filed September 24, 1993, 11:57 a.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 615-08-1. Virginia Energy Assistance Program.** The purpose of the proposed action is to plan policies and procedures for implementation in the 1994-95 program year. Regulatory requirements are contained in Title VI of the Human Services Reauthorization Act of 1990 (Public Law 101-501). No public hearing is planned on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until December 15, 1993, to Charlene H. Chapman, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, 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 amending regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The purpose of the proposed action is to incorporate emergency regulations as final regulatory action for the 1993-94 program year. Regulatory requirements are contained in Title VI of the Human Services Reauthorization Act of 1990 (Public Law 101-501). No public hearing is planned on the proposed regulation after publication.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until December 18, 1993, to Charlene H. Chapman, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-64; Filed September 28, 1993, 3:57 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 Social Services intends to consider repealing regulations

entitled: **VR 615-22-02. Standards of Regulations for Licensed Homes for Adults.** The purpose of the proposed action is to repeal the existing standards and regulations for licensed homes for adults. No public hearing is scheduled after publication of the proposed repeal. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

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

Written comments may be submitted until November 18, 1993, to Cheryl W. Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Margaret J. Friedenberg, Agency Regulatory Coordinator, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

VA.R. Doc. No. C94-43; Filed September 24, 1993, 3:37 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 Social Services intends to consider promulgating regulations entitled: **VR 615-39-01. Module for Residential Facilities for Children.** The purpose of the proposed action is to develop standards applicable to residential facilities for children licensed by the Department of Social Services. This module will be applied in addition to the Standards for Interdepartmental Regulation of Residential Facilities for Children. A public hearing is not planned after publication of the proposed regulation. The board will consider public comments at its regularly scheduled meeting.

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

Written comments may be submitted until November 15, 1993, to Doris Jenkins, Division of Licensing Programs, Department of Social Services, 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) 692-1820.

VA.R. Doc. No. C94-14; Filed September 13, 1993, 3:40 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Professional Soil Scientists intends to consider amending regulations entitled: **VR 627-02-01. Board for Professional Soil Scientists Regulations.** The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia. The agency does not intend to hold a public hearing on the proposed amendments to this regulation.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R94-25; Filed September 21, 1993, 11:56 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 662-02-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.** The purpose of the proposed action is to repeal the provisions of § 2.24 which establish procedures for appeals of denial, fines, suspension of licenses and to replace them with regulations which incorporate the provisions of § 59.1-373 of the Code of Virginia. The commission will hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until December 1, 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. R94-92; Filed October 13, 1993, 11:47 a.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Waste Management Facility Operators intends to consider amending regulations entitled: **VR 674-01-02. Waste Management Facility Operators Regulations.** The purpose of the proposed action is to review the current fee structure to assure compliance with § 54.1-113 of the Code of Virginia and review the entire regulation to consider any amendments which may be necessary. The agency does not intend to hold a public hearing on the amendments to this regulation.

Statutory Authority: §§ 54.1-113, 54.1-201, and 54.1-2211 of

the Code of Virginia.

Written comments may be submitted until November 19, 1993.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VA.R. Doc. No. R94-26; Filed September 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 the Conduct of Research on Clients and Records of the Department of Youth and Family Services.** The purpose of the proposed action is to provide guidelines to ensure competent, complete and professional human research activities as defined in § 32.1-162.16 of the Code of Virginia to be conducted or authorized by the department. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 66-10.1 of the Code of Virginia.

Written comments may be submitted until November 18, 1993.

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

VA.R. Doc. No. R94-61; Filed September 29, 1993, 9:21 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: **Standards for Family Group Home.** The purpose of the proposed action is to set minimum standards for the care of youth in and operation of family group homes in Virginia. These proposed standards will supersede the minimum standards for family group homes adopted by the Board of Corrections on March 9, 1983. The board plans to hold a public hearing on the proposed standards after publication.

Statutory Authority: §§ 16.1-311, 66-10 and 66-27 of the Code of Virginia.

Written comments may be submitted until December 15, 1993.

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

VA.R. Doc. No. R94-174; Filed October 17, 1993, 9:17 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 FOR ACCOUNTANCY

Title of Regulation: **VR 105-01-1. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 105-01-1:1. Public Participation Guidelines.**

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

Public Hearing Date: N/A – Written comments may be submitted until January 15, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the Public Participation Guidelines is found in §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia. The board is empowered to conduct studies and promulgate regulations setting standards for licensure and certification of accountants.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving, and considering public comment.

Substance: The proposed Public Participation Guidelines contain substantially similar language to the emergency Public Participation Guidelines promulgated in June 1993, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed PPG's is such that the public has the advantage of participating in the development of the regulations. With participation by the public, they will become more familiar with the contents and expectations of the regulations. The advantage to the agency is that with public knowledge of the regulations, the agency will save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Public Participation Guidelines affect approximately 12,000 individuals licensed or certified by the board. The regulations also apply to the general public, associations and other related groups to ensure their participation in the regulatory process.

Since the proposed Public Participation Guidelines are substantially similar to the current emergency Public Participation Guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Board for Accountancy's Public Participation Guidelines (PPG's) provide an opportunity for public participation in the promulgation process of regulation. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days, and will state whether or not a public hearing will be held. The PPG's require the agency to provide a comment period and include instructions as to when the agency must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to follow when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are outlined in the regulations. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 105-01-1:1. 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" or "board" means the Board for Accountancy.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. Notice of intent.

At least 30 days prior to the filing of the "Notice of Comment Period" and the 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. Notice of formulation and adoption.

At any meeting of the agency or a subcommittee where it is anticipated the formation or adoption of a regulation will occur, the subject matter shall be transmitted to the Registrar of Regulations 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 within 30 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 30 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.

§ 8. 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade association mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6, and 8 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. Nos. R94-182 and R94-170; Filed October 27, 1993, 11:54 a.m.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

Title of Regulation: **VR 115-01-01. Guidelines for Public Participation (REPEALING).**

VA.R. Doc. No. R94-150; Filed October 27, 1993, 10:59 a.m.

Title of Regulation: **VR 115-01-01:1. Public Participation Guidelines.**

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

Public Hearing Date: December 7, 1993 - 1 p.m.
Written comments may be submitted until 9 a.m. January 18, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for these Public Participation Guidelines is § 9-6.14:7.1 of the Code of Virginia, which requires agencies to develop public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

Purpose: Because, as a general principle, public participation guidelines must precede the development of other regulations subject to Article 2 of the Virginia Administrative Process Act, the proposed public participation guidelines are a prerequisite to the development of regulations of the Department of Agriculture and Consumer Services and of the Virginia Agricultural Development Authority--regulations which protect, preserve, or promote the public's health, safety, or welfare.

The agency is operating under emergency public participation guidelines which will expire in June 1994. Therefore, it is imperative that the agency have final, permanent public participation guidelines in place at the time of the expiration of the emergency public participation guidelines; otherwise, the agency's authority to make regulations under Article 2 of the Administrative Process Act will lapse.

Substance: Because the present regulatory action is also for the purpose of reviewing the agency's public participation guidelines for effectiveness and continued need, a requirement of Executive Order Twenty-Three (90)(Revised), the agency has redrafted the regulation in clearer language, while incorporating provisions that improve the regulation. Some of these improvements are based on public comment, others on the agency's own motion.

Specifically, the agency included (i) a provision calling for additional information to be put in the already-specified press releases relating to how the public may comment on proposed regulations; and (ii) a provision that increases the number of places throughout the Commonwealth where the proposed regulation may be filed for public inspection.

The agency streamlined the regulation by deleting provisions that are now rendered redundant by the amendments to the Administrative Process Act or that do not relate to public participation in the regulation making process, including (i) a provision relating to petitioning the agency for the initiation of regulation making; and (ii) a provision relating to how regulations will be printed after they are in effect.

Issues: The agency is aware of no disadvantages to the public relating to the implementation of the proposed regulation. There would appear to be only advantages to the public, namely, the advantages contemplated by the legislature through its mandating that agencies adopt public participation guidelines, and the advantages of opportunity to participate fully in the agency's development of regulations.

Estimated Impact: Every person who wishes to participate in any regulation making by any regulation-making entity operating under the aegis of the Department of Agriculture and Consumer Services (with the exception of the Pesticide Control Board, which has adopted its own public participation guidelines) or by the Virginia Agricultural Development Authority will be affected. Because participation in regulation making is not (and has not been) limited to citizens of Virginia, every person in the world who wishes to participate in regulation making would be affected by the proposed public participation guidelines.

1. Projected cost to the state for implementation and enforcement of regulations. The state, through the agency, intends to pay for the costs associated with the implementation and enforcement of the regulations, from funds appropriated to the department. The agency estimates the cost of implementing and enforcing the regulation to be between $5,000 to $20,000 per year (depending on the number of regulations under development or review), which includes the cost of postage for sending notices of intended regulatory action and proposed regulations to interested persons; the travel, lodging, meals, and per diem costs of any regulation-making entity governed by these Public Participation Guidelines; the cost of employing court reporters at public hearings; and the costs of printing.

2. The source of funds to address all identified fiscal impacts, number and types of regulated entities or persons affected. The costs of implementation of these Public Participation Guidelines will be paid from general funds and nongeneral funds, appropriated to the agency.

3. Projected costs to regulated entities. There are no costs to regulated entities.

Summary:

Public Participation Guidelines are regulations, mandated by § 9-6.14:7.1 of the Code of Virginia, that govern how the agency will involve the public in the making of regulations. The regulations promulgated in 1984 (VR 115-01-01) are being repealed and replaced by these public participation guidelines.

The proposed regulatory action is for the purpose of reviewing for effectiveness and continued need an emergency regulation that will be in effect only through June 10, 1994. The proposed regulation is for the purpose of providing a permanent regulation to supersede the emergency regulation.

The proposed regulation governs regulation-making entities under the aegis of the Department of Agriculture and Consumer Services (with the exception of the Pesticide Control Board, which has adopted its own public participation guidelines), and the Virginia Agricultural Development Authority.

VR 115-01-01:1. 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.

"Agency" means any of the following in the exercise of its duly authorized regulation-making authority: (i) entities under the jurisdiction of the department that have the authority to make regulations, including the Board of Agriculture and Consumer Services, the commissioner, all divisions of the department (including the state veterinarian), offices, boards (excluding the Pesticide Control Board, but only to the extent that any regulation of the Pesticide Control Board is developed exclusively under VR 115-04-21, Public Participation Guidelines, Pesticide Control Board, or any successor regulation), and commissions under the jurisdiction of the department; and (ii) the Virginia Agricultural Development Authority.

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

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

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia.

§ 2. Applicability.

A. These Public Participation Guidelines apply to (i) the development of any proposed regulation; (ii) the development of any proposed amendment to an existing regulation; and (iii) the repeal of an existing regulation, governed by Article 2 of the Administrative Process Act.

B. These Public Participation Guidelines 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) on or after the effective date of these Public Participation Guidelines.

C. Any agency governed by these Public Participation Guidelines may solicit, according to the terms of these Public Participation Guidelines, comment on matters governed by subsection A of this section from interested persons, and will afford interested persons the opportunity to submit data, views, and arguments, either orally or in writing, to the agency or to the agency's specially designated subordinate. Nothing in this subsection shall be deemed to prohibit any agency governed by these Public Participation Guidelines from taking steps to involve the public that are different than or in addition to those contained in these Public Participation Guidelines.

§ 3. Identification of interested persons and advisors; notice of intended regulatory action.

A. The agency may identify persons that may be interested in proposed regulation making. The agency, in identifying persons interested in proposed regulation making, and the commissioner in identifying potential advisors (pursuant to § 6 of these Public Participation Guidelines) may consult the following:

1. A directory of agricultural organizations printed by the department;

2. Available individual industry mailing lists;

3. A listing of persons who request to be placed on a mailing list maintained by the agency; and

4. 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' responsibility.

B. Nothing in this section shall be deemed to require the agency or the commissioner to use any entry contained in the lists named in subsection A of this section.

C. The agency may furnish the notice of intended regulatory action, specified in § 6 B, to any person that the agency identifies as being interested in a potential regulation.

§ 4. Proposed regulation.

The agency may:

1. Offer persons the opportunity to make oral and written comments on the proposed regulation;

2. Furnish a copy of the proposed regulation to all persons who respond to the notice of intended regulatory action;

3. Furnish a copy of the proposed regulation to persons that the agency identifies as being interested in the proposed regulation;

4. Prepare a news release and distribute it to all daily and weekly newspapers, radio and television stations, and news wire services serving Virginia concerning the proposed regulation. The news release may include information about:

a. The subject matter and purpose of the proposed regulation;

b. The deadline for submitting comments on the proposed regulation;

c. The responsible contact person within the agency to whom comments should be addressed;

d. A procedure for obtaining copies of the proposed regulation; and

e. The times, dates, and places of the public hearings;

5. Make available for public inspection a copy of each proposed regulation at the following offices of the department:

a. Abingdon;

b. Franklin;

c. Harrisonburg;

d. Ivor;

e. Lynchburg;

f. Onley;

g. Roanoke;

h. Suffolk;

i. Warrenton; and

j. Wytheville;

6. Hold a public hearing or public hearings on every proposed regulation governed by these Public Participation Guidelines; and

7. Hold the record open to provide an additional time period for receiving written comments on the proposed regulation.

§ 5. Final regulation.

After a regulation has been adopted pursuant to the 30-day final adoption process, the agency may issue a news release about the regulation.

§ 6. General policy for the use of advisors; notice of intended regulatory action.

A. This section sets out the general policy of the agency in the use of advisors. This general policy addresses the circumstances in which the agency considers advisors appropriate and the circumstances under which the agency intends to make use of advisors.

B. Any agency governed by these Public Participation Guidelines shall include in any notice of intended regulatory action filed with the Registrar of Regulations: (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.

C. The agency considers an advisor appropriate and intends to make use of an advisor when:

1. The agency receives in writing from at least 25 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 agency.

D. The agency hereby delegates to the commissioner the authority to appoint advisors. The provision of subsection C of this section notwithstanding, the commissioner may, at his own motion or when the agency deems it appropriate, appoint an advisor.

E. It is in the commissioner's sole discretion to determine:

1. Who the advisor, if any, shall be; and

2. 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 subdivision.

VA.R. Doc. No. R94-112; Filed October 26, 1993, 9:41 a.m.

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Pesticide Control Board

Title of Regulation: **VR 115-04-21. Public Participation ~~Guidelines of the Pesticide Control Board~~** *Guidelines* **.**

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

Public Hearing Date: January 15, 1994 - 9 a.m.
Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia and Chapter 898 of the 1993 Acts of Assembly mandate that agencies of state government include a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. The agency is required to set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups which the agency intends to use in addition to the Notice of Intended Regulatory Action.

Purpose: The board proposes to review the regulations for effectiveness and continued need to include the proposed amendments to VR 115-04-21, to ensure that the public has the opportunity to participate in the promulgation of regulations by the Pesticide Control Board. The board will give reasonable notice through The Virginia Register of the board's intended regulatory action and invite the public to comment on whether an advisor should be utilized in the regulatory process. The proposed amendments will define the parameters under which an advisor shall be appointed and will permit the board to appoint an advisor even though the public does not comment on or deem it necessary. Also, the public will be assured, by regulation, when filing a petition for revision of the public participation guidelines to the board that the board will consider and respond to the request. The Pesticide Control Board has statutory authority for promulgation of regulations relating to pesticide control, therefore, references to Division of Product and Industry Regulation have been proposed for deletion and replaced by Pesticide Control Board. The Office of Policy Analysis and Development has been renamed so the new name Office of Policy, Planning, and Agriculture Development replaces the old name throughout the regulation.

Substance: Proposed changes are as follows:

Section 1 provides the definitions of "advisor" and "chairman" and incorporates by reference those definitions contained in § 3.1-249.27 of the Code of Virginia.

Section 5 A sets out the general provisions for use of advisors.

Section 5 B proposes to require the board to include in any notice of intended regulatory action any provision required by statute and a statement inviting comment from the public regarding the need for an advisor. Included in the proposed regulation is a provision requiring the board to use an advisor when 25 persons declare, in writing, that an advisor be appointed. The board proposes to use an advisor when the subject matter of the notice of intended regulatory action has not been, previously, the subject of regulation making by the board.

Section 5 C proposes to authorize the chairman to appoint an advisor on any regulatory action regardless of provisions of § 5 B.

Section 5 D proposes to delete authority for appointing an advisor to the chairman with ratification by the board. The board proposes only one change to the Emergency Public Participation Guidelines currently in effect, that of requiring ratification by the board of an advisor appointed by the chairman. It proposes to give authority to the chairman to determine whether the advisor 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).

Section 13 proposes to require the board to receive, consider and respond to petitions by an interested person at any time regarding reconsideration or revision of the public participation guidelines.

All references to Department of Agriculture and Consumer Services and Office of Policy Analysis and Development are proposed for deletion and Pesticide Control Board and Office of Policy, Planning, and Agricultural Development, respectively, have been proposed to replace them. Additionally, as the Office of Policy, Planning, and Agricultural Development no longer conducts a subject matter review of proposed and final regulations, references to a review by that office have been deleted for clarity.

Issues: The proposed amendments to the public participation guidelines will encourage the public to become involved in the rulemaking process and specific requirements are set forth for the board to ensure consideration of the public's comments and requests. The board has not received any comment from the public regarding the intent to promulgate these regulations and is not aware of any controversy surrounding the proposals. The proposed regulations are currently in effect as emergency provisions. The board will schedule a 60-day comment period and convene a public hearing to receive information from the public. This will permit the board to assess any issues and make adjustments to the final regulations, if appropriate.

Cost of implementation: There is no significant cost to

individuals choosing to petition the board regarding regulatory matters. The cost to the agency for the proposed amendment which provides for the appointment of an "advisor" to participate in the regulatory process cannot be precisely determined at this time. However, it is anticipated that advisors appointed under this provision would be paid a $50 per diem/per day and be reimbursed for reasonable lodging and meal expenses.

The board may conduct approximately five separate regulatory actions during FY 95 which could involve appointment of two advisors for each action. The projected cost for these appointments is as follows:

PROJECTED COST FOR FY 95

Per Diem (10 adv x 3 days x $50) $1,500

Lodging/Food (10 adv x 2 nights x $100) $2,000

Projected Total Cost $3,500

Number and Type of Regulated Entities Affected:

Pesticide Product Registrants (9,188 products) 887

Commercial Applicators 6,200

Registered Technicians 1,369

Projected Cost of Compliance: There is no significant compliance cost associated with the proposed regulations.

Summary:

The Pesticide Control Board has proposed amendments to VR 115-04-21, Public Participation Guidelines, to provide more opportunity to the public to petition the board regarding regulatory matters. Emergency public participation guidelines became effective June 21, 1993, to ensure full compliance with the amendments to the Administrative Process Act effective July 1, 1993.

The board proposes to review its public participation guidelines for effectiveness and continued need and to encourage the public to indicate its desire to have an advisor appointed to participate in the promulgation of regulations. An "advisor" is clearly defined and to expedite the process, the board proposes to delegate appointment of the advisor to the board chairman with ratification by the board.

Additionally, the proposed regulations require the board to receive, consider and respond to the public's request for amendment to the public participation guidelines.

VR 115-04-21. Public Participation Guidelines.

§ 1. Definitions.

All terms defined in the Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia) are hereby incorporated by reference in this regulation. The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Advisor" means (i) a standing advisory panel; (ii) an ad hoc advisory panel; (iii) consultation with groups; (iv) consultation with individuals; or (v) any combination thereof.

"Chairman" means the Chairman of the Virginia Pesticide Control Board.

§ ~~1.~~ *2.* Purpose.

These public participation guidelines set out methods for the identification and notification of parties, persons, and groups interested in the development of regulations of the Pesticide Control Board (hereinafter "board"). The board and the staff of the ~~Department of Agriculture and Consumer Services~~ *Office of Pesticide Management* shall observe the requirements the present guidelines contain during the formation, drafting, promulgation, and final adoption of any and all regulations of the Pesticide Control Board:

1. Except as provided in § ~~11~~ *12* or otherwise authorized by statute; and

2. Except for regulations for which Notice of Intended Regulatory Action has been filed with the Registrar of Regulations pursuant to Guidelines for Public Participation in Regulation Development and Promulgation of the Virginia Department of Agriculture and Consumer Services, if such Notice of Intended Regulatory Action was filed prior to the effective date of the present regulation.

§ ~~2.~~ *3.* Establishment and maintenance of mailing lists.

A. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall establish and maintain mailing lists of those who are or may be interested in a regulation to be developed. In partial or complete fulfillment of this requirement, the staff may utilize mailing lists already maintained by the Department of Agriculture and Consumer Services.

B. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* may develop additional mailing lists by appropriate announcement in news releases and in agency publications of the development of mailing lists.

C. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall include on its mailing lists individuals and groups who request to be on the lists.

§ ~~3.~~ 4. Public meetings.

A. The board or any representative designated for such purpose by the board may hold a public meeting on any new regulation under consideration and may hold a public meeting relating to amendment of any existing regulation.

B. In notifying the public of any such meeting, the staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall prepare and the ~~Office of Policy Analysis and Development~~ *Office of Policy, Planning, and Agricultural Development* shall review and file a "Notice of Meeting" (Form RR06) and a "Notice of Intended Regulatory Action" (Form RR01) with The Virginia Register of Regulations. The date set for the meeting in the notice shall be at least 30 days after the date of publication of the Notice of Meeting and the Notice of Intended Regulatory Action in The Virginia Register of Regulations.

C. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall mail notice of the meeting and the Notice of Intended Regulatory Action to those on mailing lists corresponding to the subject of the regulation under consideration.

D. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* may also through the Communication Office issue press releases on the upcoming public meeting and publish notice of the public meeting in agency publications.

§ ~~4. Advisory committee.~~

~~The board may appoint an advisory committee to make recommendations on the content of a regulation under consideration. The membership of the committee shall be formed so as to give a balanced representation of interested parties and views.~~

§ 5. General policy for the use of advisors.

A. This section sets out the general policy of the board for the use of advisors. This general policy addresses the circumstances in which the agency considers advisors appropriate and the circumstances under which the agency intends to make use of advisors.

B. In any notice of intended regulatory action filed by the board at or after the time these public participation guidelines take effect, the board shall include (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 board considers an advisor appropriate and intends to make use of an advisor when:

1. The board receives in writing from at least 25 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 board.

C. Despite the provisions of subsection B of this section, the chairman may in his sole discretion or at the board's direction appoint an advisor.

D. The board hereby delegates to the chairman the authority to appoint advisors and the appointments shall be ratified by the board. The decision shall rest exclusively with the chairman as to 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 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 public participation guidelines take effect.

§ ~~5.~~ 6. Drafting the regulation.

In consultation with any advisory committee appointed, the staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall draft the regulation. The staff shall consider each public comment and be prepared to respond in writing as to why a comment was or was not incorporated into the draft regulation.

§ ~~6.~~ 7. Board review and endorsement of draft regulation.

The board shall meet and review the staff draft. If the draft is satisfactory to the board as a proposal, it shall so indicate by vote, and authorize its formal publication as a proposed regulation.

§ ~~7.~~ 8. Proposed regulation.

A. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall prepare required documents (including notice of opportunity for oral or written submittals, accomplished by "Notice of Comment Period" (Form RR02)) and submit them with the proposed regulation ~~to~~ *through* the ~~Office of Policy Analysis and Development for review and~~ *Office of Policy, Planning, and Agricultural Development for* publication in The Virginia Register of Regulations. The register publication and the newspaper publication required by § ~~8~~ *9* B shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals.

B. At the same time, the ~~Office of Policy Analysis and Development~~ *Office of Policy, Planning and Agricultural Development* shall also submit the proposed regulation

along with required documents to the Office of the Governor and the Department of Planning and Budget for review.

§ ~~8.~~ *9.* Informational proceeding and notice thereof.

A. Informational proceeding.

The board may hold an informational proceeding pursuant to § 9-6.14:7.1 of the Code of Virginia on every regulation it proposes and on every proposed amendment to each regulation, notice for which shall comply with the provisions of this section of this regulation.

B. Notice of informational proceeding.

1. In addition to the required notice of opportunity for oral or written submittals published in the Virginia Register of Regulations pursuant to § ~~7~~ *8* , and in a newspaper of general circulation published in the capital city, the staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall, at the board's direction, publish notice of the board's proposed regulation and informational proceeding thereon in:

a. Other newspapers with substantial readership in Virginia, which notice shall meet the same requirements for notice to the public of the opportunity for oral or written submittals as the notice published in the newspaper of general circulation published at the capital city;

b. Press releases;

c. Mailings to those on its mailing lists; and

d. Other means as directed by the Commissioner or the board.

2. The staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* is directed to mail a copy of the proposed regulation and notice of the informational proceeding thereon to everyone who has participated in public discussion of the regulation pursuant to the current regulation making.

§ ~~9.~~ *10.* Adoption of regulation.

The board may adopt the proposed regulation after the last day prescribed for submittals of public comment. After the board has adopted the regulation, the staff of the ~~Division of Product and Industry Regulation~~ *Pesticide Control Board* shall prepare and *submit through* the ~~Office of Policy Analysis and Development shall review and submit~~ *Office of Policy, Planning, and Agricultural Development,* a copy of the adopted regulation and the required documentation to The Virginia Register of Regulations, the Office of the Governor, and the Department of Planning and Budget.

§ ~~10.~~ *11.* Adoption of summary; of statement as to basis; and of description of public comment.

The summary; statement as to basis, purpose, substance, issues, and impact of the regulation; and the summary description of the nature of the oral and written data, views, and arguments presented during the public proceedings and the board's comments thereon required by § 9-6.14:9 D of the Code of Virginia, shall be made a part of the board's minutes and included as a part of the board's regulation file.

§ ~~11.~~ *12.* ~~Emergency regulations~~ *Application* .

The provisions of these public participation guidelines shall not apply to the making of regulations ~~which the Pesticide Control Board finds are necessitated by an emergency situation~~ *exempted under § 9-6.14:4.1 of the Code of Virginia* .

§ 13. Petitions.

Any person may petition the board to adopt or amend any regulation. Any petition received shall appear on the agenda of the next board meeting. The board shall consider and respond to the petition within 180 days. The board shall have the sole authority to dispose of the petition.

The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of these public participation guidelines.

VA.R. Doc. No. R94-134; Filed October 26, 1993, 4:27 p.m.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision HH – Rule 5-6, Regulated Medical Waste Incinerators).**

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

Public Hearing Dates:
December 14, 1993 - 8 p.m.
December 15, 1993 - 8 p.m.
December 16, 1993 - 8 p.m.
Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Purpose: The purpose of the proposed regulation is to require the owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. The proposed regulation is being adopted in response to a legislative mandate from the General Assembly.

Substance: The major provisions of the proposal are as follows: (i) establish emission limits for particulate matter, carbon monoxide, hydrogen chloride, dioxins and furans, visible emissions, fugitive dust/emissions, odor, toxic pollutants, and radioactive materials; (ii) establish incinerator unit operating parameters and practices for the minimization and removal of pollution, including temperature limitations, scrubber requirements, and operator training; (iii) establish test methods and procedures for monitoring compliance; (iv) establish specific emission and operational parameter monitoring requirements; and (v) establish notification, records and reporting requirements, including specific content and frequency information regarding measurements of opacity, emission rates, and temperatures.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are as follows: (i) Public: The regulations will be an advantage to the community because they will reduce air pollution, a source of significant damage to property and health. On the other hand, in order to meet additional emission limitations, sources will need to invest substantial amounts of time, labor, and money. This may discourage a source from locating in an area, depriving an area of the source's economic and waste management benefits; and (ii) Department: Advantages to the department stemming from the regulation include better determination of compliance and monitoring, as well as a better knowledge of emissions in an affected area. In terms of cost, the regulation may be a disadvantage; additional emission limitations require additional time and staff to ensure that permits meet the applicable guidelines and that the sources follow them.

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically § 10.1-1308 which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Additionally, Chapters 773, 774, and 751 of the 1992 Acts of the General Assembly require the board to promulgate regulations affecting regulated medical waste incinerators.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

Impact: The affected facilities are all regulated medical waste incinerators except those the construction or modification of which as defined in Part VIII of the regulations commenced prior to September 1, 1993. Because this regulation affects sources yet to be constructed, it is difficult to determine the exact number of potentially affected facilities. However, it is estimated that approximately five facilities will be required to meet the operating parameters specified in the regulation within two years of its promulgation.

The estimated costs to meet the regulatory requirements for a typical commercial facility with an incineration unit rated at over 1,000 pounds per hour are about $1,126,500 for the initial capital and other costs and about $589,650 for the ongoing annual costs. Costs are in 1993 dollars.

It is not expected that the regulation will result in any cost to the department beyond about $5,000 per year. The sources of department funds to carry out this regulation are the general fund and the grant money provided by EPA under Section 105 of the federal Clean Air Act.

Comparison with Federal Requirements: No federal requirements affect the proposal; therefore, the proposal is more stringent than federal requirements. The regulation is being promulgated in the absence of a federal requirement because the 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators (MWIs) until September 1, 1993, and to require the promulgation of regulations by September 1, 1993. The legislation was proposed in response to health concerns from commercial MWI emissions. This legislation was again submitted to the General Assembly in the 1993 session, and a new version extending the original moratorium for the issuance of permits for commercial infectious waste incinerators (i.e., MWIs) from September 1, 1993, to December 1, 1993, was passed. However, the deadline for promulgation of regulations remains September 1, 1993.

Additional Issues for Public Comment: (1) The proposed regulation provides different levels of controls and requirements for different sizes of units. This is done because the economic burden of greater controls and requirements on smaller sources outweighs the net return of emissions reductions and environmental benefit. Emissions limits are designed to be proportional: smaller sources have smaller limits because they emit less. The board seeks input on this practice – is its tiered approach to emission controls based on source size appropriate, or should the standards be uniform, for all source sizes? (2) The proposed regulation does not provide any opportunity for public participation beyond that required by the permit requirements in Part VIII and the toxic pollutant requirements in Rule 5-3 of the board's regulations. Although these regulatory provisions provide for extensive public participation, some of the smaller facilities would be exempt. The board seeks comment on whether public participation should be required for all facilities, regardless of size. (3) The proposed regulation proposes two ways in which to control dioxins and furans: a stack limit (a certain emissions level measured at the stack), and an ambient limit. The ambient limit provides an expanded view of what happens to the emissions after they have left the stack and dispersed over the local area. In the past, the ambient level has been measured at the place where the public is most likely to come in immediate contact with the emissions: at or beyond the facility's fenceline. Some facilities, however, provide access to the general public. Other facilities may have property

located relatively close to public facilities or housing. The board seeks comment on whether the ambient dioxin/furan level should be measured at or beyond the fenceline, within the facility property, or some place else. (4) The board seeks specific comments on implementing the regulation relative to the overall cost of the delivery of medical services to the general public. (5) The proposed regulation applies only to new and modified incinerators. The laws passed by the General Assembly were due to concern over the increase in regulated medical waste incinerators despite sufficient capacity to dispose of such waste. Concern over the importation of waste from out of state was also expressed. Therefore, given the primary concern over proposed new facilities rather than existing ones, regulation development was devoted to new facilities. Finally, the board also has regulations in place for existing sources to control emissions from older incinerators; federal guidelines specifically intended for regulated medical waste incinerators will be promulgated soon, as well. The board seeks comment on whether the regulation should apply to new sources, to existing sources, or to both.

Location of Proposal: The proposal, an analysis conducted by the Department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's air regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Department of Environmental Quality
Southwestern Virginia Air Regional Office
121 Russell Road
Abingdon, Virginia 24210
Ph: (703) 676-5482

Department of Environmental Quality
Valley of Virginia Air Regional Office
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia 24019
Ph: (703) 561-7000

Department of Environmental Quality
Central Virginia Air Regional Office
7701-03 Timberlake Road
Lynchburg, Virginia 24502
Ph: (804) 582-5120

Department of Environmental Quality
Northeastern Virginia Air Regional Office
300 Central Road, Suite B
Fredericksburg, Virginia 22401
Ph: (703) 899-4600

Department of Environmental Quality
State Capital Air Regional Office
Arboretum V, Suite 250
9210 Arboretum Parkway
Richmond, Virginia 23236
Ph: (804) 323-2409

Department of Environmental Quality
Hampton Roads Air Regional Office
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia 23320-2168
Ph: (804) 424-6707

Department of Environmental Quality
Northern Virginia Air Regional Office
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia 22150
Ph: (703) 644-0311

Summary:

The proposed amendments concern provisions covering standards of performance for new and modified regulated medical waste incinerators. The amendments (i) establish emission limits for particulate matter, carbon monoxide, hydrogen chloride, dioxins and furans, visible emissions, fugitive dust/emissions, odor, toxic pollutants, and radioactive materials; (ii) establish incinerator unit operating parameters and practices for the minimization and removal of pollution, including temperature limitations, scrubber requirements, and operator training; (iii) establish test methods and procedures for monitoring compliance; (iv) establish specific emission and operational parameter monitoring requirements; and (v) establish notification, records and reporting requirements, including specific content and frequency information regarding measurements of opacity, emission rates, and temperatures.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision HH – Rule 5-6, Regulated Medical Waste Incinerators).

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

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

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

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

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

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

§ 120-05-0602. Definitions.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Pathological wastes;

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

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

6. Any residue or contaminated soil, water, or debris

resulting from cleanup of a spill of any regulated medical waste; and

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

Regulated medical waste shall not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. For incinerators with a rated capacity equal to or greater than 1000 pounds per hour: 0.010 grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

2. For incinerators with a rated capacity equal to or greater than 500 pounds per hour and less than 1000 pounds per hour: 0.03 grains per dry standard cubic foot of exhaust gas corrected to 7.0% oxygen (dry basis).

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

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

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

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

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

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

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

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

A. No owner or other person shall cause or permit to be discharged into the atmosphere from any regulated medical waste incinerator with a rated capacity equal to

or greater than 500 pounds per hour any total dioxin or furan emissions in excess of 8 grains per billion dry standard cubic feet corrected to 7.0% oxygen (dry basis).

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

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

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

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

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

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

§ 120-05-0609. Standard for odor.

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

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

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

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

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

§ 120-05-0612. Compliance.

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

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

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

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

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

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

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

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

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

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

9. For incinerators with a rated capacity equal to or greater than 500 pounds per hour and less than 1000 pounds per hour, hydrogen chloride emissions shall be controlled by a scrubber system capable of removing at least 90% by weight of the hydrogen chloride entering the scrubber system.

10. For incinerators with a rated capacity equal to or greater than 1000 pounds per hour, hydrogen chloride emissions shall be controlled by a scrubber capable of removing at least 95% by weight of the hydrogen chloride entering the scrubber system.

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

$$SImin = 1.2\ (SItest)(\%\ ANA)$$

where:

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

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

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

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

D. Each chief incinerator operator and shift supervisor shall obtain and keep current either a provisional or operator certification in accordance with the certification requirements of VR 674-01-02, promulgated by the Virginia Board for Waste Management Facility Operators, or an equivalent certification acceptable to the board.

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

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

1. Summary of the applicable standards;

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

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

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

5. Procedures for maintaining proper combustion air supply levels;

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

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

8. Procedures for minimizing particulate matter carryover;

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

10. Procedures for handling ash;

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

12. Procedures for reporting and recordkeeping.

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

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

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

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

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

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

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

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

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

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

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

2. For incinerators with a rated capacity equal to or greater than 1000 pounds per hour: on-site annual performance tests.

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

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

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

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

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

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

§ 120-05-0614. Monitoring.

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

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

1. For all incinerators with a rated capacity equal to or greater than 500 pounds per hour, continuous measurement and display is required for primary and secondary chamber temperatures. Thermocouples shall be located at or near the primary and secondary chamber exits.

2. For all incinerators with a rated capacity equal to or greater than 1000 pounds per hour, continuous recording is required for the secondary chamber temperature.

3. For all incinerators with a rated capacity equal to or greater than 1000 pounds per hour, continuous measurement, display and recording is required for opacity, with the output of the system recording on a six-minute average basis.

4. For all incinerators with a rated capacity equal to or greater than 1000 pounds per hour, continuous measurement, display and recording is required for flue gas stream temperature at the inlet to the final particulate matter control device. Temperatures shall be calculated in four-hour block arithmetic averages.

5. For all incinerators with a rated capacity equal to or greater than 1000 pounds per hour, continuous measurement, display and recording is required for carbon monoxide emissions, with carbon dioxide or oxygen diluent monitor.

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

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

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

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

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

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

D. The owner of an affected facility shall submit quarterly excess emission reports, as applicable, for opacity. The quarterly excess emission reports shall include all information recorded under this subsection which pertains to opacity, and a listing of the six-minute

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

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

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

1. Dates of emission tests and continuous monitoring measurements.

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

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

(1) The six-minute average opacity levels;

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

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

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

(1) All 24-hour daily geometric average percentage reductions in hydrogen chloride emissions and all 24-hour daily geometric average hydrogen chloride emission rates;

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

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

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

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

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

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

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

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

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

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

§ 120-05-0616. Registration.

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

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

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

§ 120-05-0618. Permits.

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

1. Construction of a facility.

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

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

4. Relocation of a facility.

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

VA.R. Doc. No. R94-146; Filed October 27, 1993, 9:42 a.m.

BOARD FOR AUCTIONEERS

Title of Regulation: **VR 150-01-1. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 150-01-1:1. Public Particiaption Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-602 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until January 15, 1994.
(See Calendar of Events section
for additional information)

Basis: Sections 9-6.14:7.1, 54.1-201 and 54.1-602 of the Code of Virginia provide the Board for Auctioneers with the statutory authority to promulgate Public Participation Guidelines. The board is empowered to promulgate regulations to establish entry requirements for licensure and standards of practice and conduct for auctioneers and auction firms.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the legislative changes to the APA made by the 1993 Virginia General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of auctioneers in Virginia.

Substance: Legislative changes enacted to the Administrative Process Act prompted the repeal of the existing public participation guidelines and the adoption of new emergency public participation guidelines for the Auctioneers Board on June 24, 1993. The proposed Public Participation Guidelines for the Auctioneers Board contain substantially similar language to the emergency regulations, which are in effect until June 24, 1994. Therefore, there is no change from the current status of the law.

Issues: The proposed PPG's will give interested parties as well as the general public the opportunity to participate in the formation and development of the auctioneer regulations. Such participation will be advantageous to the public since they will become more familiar with the contents and expectations of the licensure requirements and regulations. The advantage to the agency is such that with public knowledge of the regulations, the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Auctioneer Public Participation Guidelines affect approximately 1,285 licensed auctioneers and approximately 180 licensed auction firms.

Since the proposed public participation guidelines are substantially similar to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of these regulations.

Summary:

The Board for Auctioneers Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of auctioneers and auction firms. The agency will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The proposed PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption or regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and includes the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in The Virginia Register.

VR 150-01-1:1. 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" or "board" means the Board for Auctioneers.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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.

§ 8. 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade associations' mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6, and 8 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. Nos. R94-162 and R94-163; Filed October 27, 1993, 12:07 p.m.

BOARD FOR BARBERS

Title of Regulation: **VR 170-01-00. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 170-01-00:1. Public Participation Guidelines.**

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

Public Hearing Date: N/A - Written comments may be submitted until January 15, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the Public Participation Guidelines is found in §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia. The board is empowered to conduct studies and promulgate regulations setting standards for licensure and certification of barbers.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving, and considering public comment.

Substance: The proposed Public Participation Guidelines contain substantially similar language to the emergency Public Participation Guidelines promulgated in June 1993, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed PPG's is such that the public has the advantage of participating in the development of the regulations. With participation by the public, they will become more familiar with the contents and expectations of the regulations. The advantage to the agency is that with public knowledge of the regulations, the agency will save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Public Participation Guidelines affect approximately 4,700 individuals licensed or certified by the board. The regulations also apply to the general public, associations and other related groups to ensure their participation in the regulatory process.

Since the proposed public participation guidelines are substantially similar to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Board for Barbers's Public Participation Guidelines (PPG's) provide an opportunity for public participation in the promulgation process of regulation. The department (the agency) will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days, and will state whether or not a public hearing will be held. The PPG's require the agency to provide a comment period and include instructions as to when the agency must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to follow when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are outlined in the regulations. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 170-01-00:1. 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" or "board" means the Board for Barbers.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. Notice of intent.

At least 30 days prior to the filing of the "Notice of Comment Period" and the 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade associations' mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6, and 8 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. Nos. R94-181 and R94-171; Filed October 27, 1993, 11:56 a.m.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: **VR 230-01-001. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 53.1-5 of the Code of Virginia.

Public Hearing Date: January 12, 1994 - 10 a.m.
Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia requires all agencies to develop, adopt, and utilize public participation guidelines in soliciting the input of interested parties in the formation and development of regulations. Furthermore, § 53.1-5 of the Code of Virginia charges the Board of Corrections with developing, adopting, and promulgating rules and regulations as may be necessary to carry out laws of the Commonwealth administered by the Director or the Department of Corrections.

Purpose: The purpose of the amendments to the regulations is to comply with statutory changes to the Administrative Process Act. These statutory changes alter procedures for soliciting input of interested parties in the formation and development of regulations. In general, the Public Participation Guidelines are designed to provide consistent, written procedures that will ensure input from interested parties during the development, review and final stages of the regulatory process.

Substance: Part I of the regulations sets forth definitions, legal authority, purpose, administration, application, and application of the Administrative Process Act.

Part II of the regulations deals with public participation. In this part, the regulations outline procedures for the identification of interested parties, notification of interested parties through mailings and through Notice of Intended Regulatory Action, solicitation of input from interested parties through advisory panels and through other comments, and conformance to the Administrative Process Act after regulations have been developed.

The key changes to the Public Participation Guidelines include provisions that:

1. The Board of Corrections will now state within the Notice of Intended Regulatory Action whether or not it plans to hold a public hearing on the regulation after it is published.

2. Thirty days will be provided for public comment after publication of the Notice of Intended Regulatory Action before the board files a proposed regulation.

3. Any person may petition the agency to request that the agency develop a new regulation or amend an existing regulation. The board will receive, consider, and respond to the petition in writing within 180 days.

4. If the board states in the Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required, unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, the Governor directs that the agency hold a public hearing, or the agency receives requests for a public hearing from at least 25 people.

Issues: The proposed amendments to the Public Participation Guidelines will assist the public in providing greater and more meaningful input into the Board of Corrections' regulatory development. The general public should not be inconvenienced by these proposed amendments.

Impact: The projected number of individuals impacted by these amendments include all parties interested in providing input into Board of Corrections regulations. Costs should not increase for the Board of Corrections or Department of Corrections in implementing these amendments.

Summary:

The Board of Corrections is amending its regulations, VR 230-01-001 Public Participation Guidelines. These regulations will replace the emergency amended regulations "Public Participation Guidelines," which became effective July 1, 1993. The proposed amended regulations are substantially the same as the emergency amended regulations except for some minor format and grammatical changes.

The proposed amended regulations outline how the

Board of Corrections plans to ensure public participation in the formation and development of regulations as required in the Administrative Process Act.

VR 230-01-001. Public Participation Guidelines.

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:

"Agency" means any authority, instrumentality, officers of the Virginia Department of Corrections, and members of the Virginia Board of Corrections, or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency regulatory coordinator" means the individual appointed by the director to provide technical assistance to the operating units and to coordinate regulations.

"Basic law" or *"basic laws"* means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make regulations or decide cases or containing procedural requirements thereof.

"Board" means the Virginia Board of Corrections.

"Department" means the Virginia Department of Corrections.

"Director" means the Director of the Virginia Department of Corrections.

"Operating unit" means the offices of the director, deputy directors, administrators or other offices within the department that will develop or draft a regulation. Only the board may promulgate a regulation.

"Rule" or *"regulation"* means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws. Exemptions to this requirement are those listed in § 9-6.14:4.1 of the Code of Virginia or as determined by the Attorney General's office.

§ 1.2. Authority.

Chapter 1.1:1 of Title 9 of the Code of Virginia, deals with the promulgation of rules and regulations. Specifically, § 9-6.14:7.1 directs agencies of the Commonwealth to develop public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. Section 53.1-5 of the Code of Virginia empowers the Board of Corrections to make, adopt and promulgate rules and regulations.

§ 1.3. Purpose.

These guidelines are designed to provide consistent, written procedures that will ensure input from interested parties during the development, review and final stages of the regulatory process.

§ 1.4. Administration.

A. The board has the responsibility for promulgating regulations pertaining to public input in the regulatory process.

B. The director is the chief executive officer of the Department of Corrections and is responsible for implementing the standards and goals of the board.

§ 1.5. Application of regulations.

These regulations have general application throughout the Commonwealth.

~~§ 1.6. Effective date: October 1, 1989.~~

§ ~~1.7.~~ *§ 1.6.* Application of the Administrative Process Act.

The provisions of the Virginia Administrative Process Act, which is codified as Chapter 1.1:1 of Title 9 of the Code of Virginia, shall govern the adoption, amendment, modification, and revision of these regulations, and the conduct of all proceedings and appeals. All hearings on such regulations shall be conducted in accordance with § 9-6.14:7.1 *of the Code of Virginia* .

PART II.
PUBLIC PARTICIPATION.

§ 2.1. Identification of interested parties.

Each operating unit within the department which is responsible for rule making shall develop and maintain a current list of those persons, organizations, and agencies that have demonstrated an interest in specific program regulations in the past through written comments or attendance at public hearings.

§ 2.2. Notification of interested parties.

A. Individual mailings.

When an operating unit of the department determines that specific regulations need to be developed or substantially modified, the operating unit shall so notify by mail the individuals, organizations, and agencies identified as interested parties in § 2.1 of these regulations. This notice shall invite those interested in providing input to notify the agency of their interest. The notice shall include the title of the regulation to be developed or modified; the operating unit contact person, mailing address, telephone

number; and the date by which a notice of a desire to comment must be received. In addition, known parties having interest and expertise will be advised through a special mailing of the agency's desire to develop a regulation and will be invited to assist the operating unit in developing the regulation or in providing input.

B. Notice of ~~intent~~ *Intended Regulatory Action* .

1. When an operating unit of the department determines that specific regulations that are covered by the Administrative Process Act need to be developed or substantially modified, the operating unit shall ~~publish~~ *provide* a ~~notice of intent in The Virginia Register of Regulations~~ *Notice of Intended Regulatory Action to the Registrar of Regulations* .

2. This notice will invite those interested in providing input to notify the operating unit of their interest. The notice will include the title of the regulation to be developed or modified; *the subject matter and intent of the planned regulation; whether or not the agency plans to hold a public hearing on the regulation after it is published;* the operating unit contact person, mailing address, telephone number; and the date by which a notice of a desire to comment must be received. All notices shall be coordinated through the agency regulatory coordinator who will forward them for publication.

3. At least 30 days shall be provided for public comment after publication of the Notice of Intended Regulatory Action. The agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

4. Any person may petition the agency to request the agency to develop a new regulation or amend an existing regulation. The agency shall receive, consider, and respond to the petition in writing within 180 days.

5. If the agency states in the Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, the Governor directs that the agency hold a public hearing, or the agency receives requests for a public hearing from at least 25 people.

§ 2.3. Solicitation of input from interested parties *; advisory panels; other comments* .

~~A. Advisory panels.~~

A. Whenever an operating unit proposes to develop or substantially modify a regulation, it may create an advisory panel to assist in this development or modification. Advisory panels shall be established on an ad hoc basis.

1. Members of advisory panels shall consist of a balanced representation of individuals and representatives of organization and agencies identified in § 2.1 of these regulations as interested and who have expressed a desire to comment on new or modified regulations in the developmental process. Each panel shall consist of no less than three members.

2. Individual panels shall establish their own operating procedure, but in no case will a panel meet less than twice. All comments on proposed regulations shall be documented by the operating unit and a response developed for each comment.

~~B. Other comments.~~

B. All persons, organizations, and agencies that respond to the individual mailings and the notice of intent shall be provided an opportunity to examine regulations in their developmental stage and to provide written comments on these regulations to the operating unit. The operating unit shall document the receipt of these comments and respond to each commentor. The operating unit shall consider all input received as a result of responses to notifications mailed to interested parties as listed in § 2.2 of these regulations in formulating and drafting proposed regulations.

§ 2.4. Administrative Process Act procedures.

After regulations have been developed according to these guidelines, they shall be submitted for public comment under § 9-6.14:7.1 of the Code of Virginia.

VA.R. Doc. No. R94-143; Filed October 27, 1993, 9:23 a.m.

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Title of Regulation: **VR 230-30-005. Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities (REPEALING).**

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

Public Hearing Date: N/A – Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Summary:

The Board of Corrections is repealing "Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities." The provisions of these regulations will be included instead in the proposed regulations, VR 230-30-005:1 Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities. The provisions of the proposed regulations fulfill the Board of Corrections' obligation

to 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.

The basis, purpose, substance, and issues effected by the repealed regulations may be found under the proposed regulations, VR 230-30-005:1 Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

VA.R. Doc. No. R94-144; Filed October 27, 1993, 9:26 a.m.

* * * * * * * * *

EDITOR'S NOTICE: The proposed regulation entitled, "VR 230-30-005:1, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities" filed by the Department of Corrections 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 Corrections, 6900 Atmore Drive, Richmond, VA 23225. Copies of the regulations may be obtained from Amy Miller, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3262.

Title of Regulation: **VR 230-30-005:1. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.**

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

Public Hearing Date: December 15, 1993 - 10 a.m.
Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Basis: Sections 53.1-5, 53.1-68, and 53.1-80 through 53.1-82.3 of the Code of Virginia require the Board of Corrections to 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. These regulations fulfill the board's obligation to establish standards for planning, design, construction and reimbursement of local correctional facilities. The administration, operation, and operational procedures are governed by the regulations, "Minimum Standards for Local Jails and Lockups."

Purpose: This regulation is necessary to carry out the provisions of Senate Bill 795, The Cost of Jail Construction, which changes the state's share and reimbursement procedures for jail construction. For example, in the legislation, jails not qualifying for the 50% regional jail reimbursement would be reimbursed for up to 25% of the cost of the project, with no maximum limit. Also, localities seeking reimbursement must now submit community corrections plans and specifications, as well as expected financing costs. Furthermore, the legislation clarifies that reimbursable costs would include actual construction costs, land acquisition costs, architectural and engineering fees, fixed equipment costs and, for minimum security facilities, loose equipment or furnishings. Reimbursable costs would not include administrative costs, financial advisor's costs, or investment banker's costs.

Thus the proposed regulations set forth standards for managing these changes, and are necessary to promote fair and equitable distribution of state funds.

Substance: Part I of the regulation sets forth definitions as used in the standards, the legal basis, reference documents, superseded regulations, and general instructions for all localities.

Part II of the regulation examines the actual reimbursement requests by localities. Specifically, Article 1 outlines submission procedures of requests, and Article 2 addresses the requirement of a community-based corrections plan. Article 3 dictates requirements for a planning study for those localities which propose a new construction, enlargement or renovation project which exceeds the nature, scope or cost of minor renovation projects. Article 4 describes information required for minor renovation projects. Finally, Article 5 explains the criteria and priorities utilized in board funding recommendations.

Part III of the regulation specifies information required in the project documentation. For example, Article 1 specifies instructions for preliminary design documents, Article 2 describes information necessary on construction documents, Article 3 explains procedures for when there are changes during the project development, and Article 4 outlines actual construction requirements.

Part IV of the regulation instructs localities on final reimbursement procedures, including submission of requests, compliance issues, and methods of reimbursement.

Part V of the regulation outlines standards for the design and construction of secure detention facilities. This part specifically addresses design of housing units, central intake units, auxiliary areas, food service and laundry, and miscellaneous features. This part also addresses requirements for construction; mechanical, plumbing and electrical requirements; and miscellaneous construction features.

Part VI of the regulation specifies requirements for community custody facilities design and construction, addressing qualifications; housing design; miscellaneous design features; construction requirements; mechanical, plumbing and electrical requirements; and miscellaneous construction requirements.

Finally, Part VII of the regulation outlines requirements for lockups, with instructions for both design and construction.

Issues: The board recognizes that implementation of these regulations will result in advantages and disadvantages, both to the state as well as to localities. In terms of advantages, the regulations will bring together in one document requirements for both design and construction as well as reimbursement guidelines, providing easier comprehension by localities which adhere to the regulations. Also in terms of advantages, the more detailed and specific information submitted by localities should help demonstrate that the project can be completed and operated by the locality in a cost efficient manner. Furthermore, the examination of alternatives by localities should promote the recognition that incarceration is only one possible segment of correctional mechanisms.

In terms of disadvantages, localities will bear a larger work burden in submitting more detailed and specific information, such as a plan for a community-based corrections. The locality's community-based corrections plan would have to include a six-year operating budget and staffing needs assessment, a plan for development and implementation, pretrial and post-disposition punishment alternatives, and a jail population forecast which analyzes the impact of the alternatives on the jail population. This additional information will also place more responsibility upon the Department of Corrections in reviewing the proposals and upon the Department of Criminal Justice Services, which is required to review the plan of implementing alternatives and the forecast.

Impact: The fiscal impact of these regulations upon the Department of Corrections will depend significantly upon the number and type of jail construction reimbursement requests which the board receives. The department estimates that it will require $103,045 and 2.00 FTE during the first year of enactment and $90,480 and 2.00 FTE for each following year.

The regulation references §§ 53.1-80 and 53.1-81 of the Code of Virginia for actual reimbursement rates and procedures for disseminating reimbursement amounts by the State Treasurer out of funds appropriated to the Department of Corrections. Because the Board of Corrections may receive reimbursement requests at any time, local officials will have to be mindful of deadlines for Department of Corrections budget requests to the Governor and consideration during the next General Assembly session. According to the legislation, after 1995, funding requests would only be considered in even-numbered years.

Also in §§ 53.1-80 and 53.1-81, it is explained that jails not qualifying for the 50% regional jail reimbursement would be reimbursed for up to 25% of the cost of the project, with no maximum limit.

Localities will now have to submit detailed documentation for proposed minor renovation projects with a total anticipated project cost of up to $200,000, as opposed to up to $100,000 in previous regulations. This change allows more projects to be submitted by localities with a reduced scope of justification.

The regulations reference § 53.1-82.2 of the Code of Virginia which explains that reimbursements made by the Commonwealth to localities for a portion of the capital costs of a jail project may be made either in two equal lump sums or over a specified period of time through a contractual agreement entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the locality(ies) or regional authority undertaking the jail project. According to the Department of Planning and Budget, the lump payments method may accelerate appropriations for projects, requiring in some cases that funds would have to be carried across biennia. Payments made over a specified period of time may impact the state as well. For example, financing payments over time would have to be recorded as debt and not as an ordinary general fund expenditure, according to the Department of Treasury. Thus this form of payment may increase the state's tax supported debt burden. Also, the workload of the Department of Treasury should increase in reviewing and managing contracts.

Summary:

The Board of Corrections is promulgating the regulations, "Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities" in order to replace the emergency regulations which became effective July 1, 1993. The proposed regulations are substantially the same as the emergency regulations, except for some format and grammatical changes.

The provisions of the regulations fulfill the Board of Corrections' obligation to 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.

These regulations supersede VR 230-30-008, "Regulations for State Reimbursement of Local Correctional Facility Construction Costs" and VR 230-30-005, "Guide for Minimum Standards in Design and Construction of Jail Facilities."

VA.R. Doc. No. R94-148; Filed October 27, 1993, 9:28 a.m.

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Title of Regulation: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Construction Costs (REPEALING).**

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

Public Hearing Date: N/A – Written comments may be submitted until January 17, 1994.
(See Calendar of Events section for additional information)

Summary:

The Board of Corrections is repealing "Regulations for State Reimbursement of Local Correctional Facility Construction Costs." The provisions of these regulations will be included instead in the proposed regulations, VR 230-30-005:1 Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities. The provisions of the proposed regulations fulfill the Board of Corrections' obligation to 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.

The basis, purpose, substance, and issues effected by the repealed regulations may be found under the proposed regulations, VR 230-30-005:1 Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

VA.R. Doc. No. R94-145; Filed October 27, 1993, 9:28 a.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program (REPEALING).**

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

Public Hearing Date: N/A – Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: The regulations were promulgated in 1983 under the authority of Section 32.1-12 of the Code of Virginia. This Code section authorizes the Board of Health to make, adopt, promulgate and enforce regulations and provide for reasonable variances and exemptions as necessary to carry out the provisions of Title 32.1 and other laws of the Commonwealth administered by it, the Commissioner or the Department of Health. Item 420 of Chapter 684, Special Acts of the Assembly, 1992, provided funds for the Maternal and Neonatal High-Risk Hospitalization Program. The Program was limited to funds appropriated to it by the General Assembly.

Purpose: Repeal of the regulations is proposed since they are no longer necessary. The Maternal and Neonatal High-Risk Hospitalization Program was discontinued in FY 1988 when appropriations for the program ended. The program reimbursed eligible hospitals for services provided to certain high-risk pregnant women and newborns whose family income was below 100% of the federal poverty level. Services that were provided by the program are now available through Medicaid-reimbursed services as well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated care.

Substance: This section is not applicable since this submission addresses repeal of the regulation.

Issues: The repeal of the regulation presents no advantages or disadvantages for the public. The advantage to the Department of Health is that agency regulatory files can be more efficiently maintained when unnecessary regulations can be deleted.

Estimated Impact:

Number and Types of Entities or Persons Affected: Repeal of the regulations will have no impact on any regulated entity or person since the Maternal and Neonatal High-Risk Hospitalization Program no longer exists. Services that were provided by the program are now available through Medicaid-reimbursed services as well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated areas.

Projected Cost to Regulated Entities for Implementation and Compliance: This submission addresses repeal of the regulation at no cost to formerly regulated entities.

Projected Cost to the Department for Implementation and Enforcement: Since this proposal repeals regulations, no cost to VDH is associated with its action. Likewise, no savings will be realized as the program has not been funded for a number of years.

Summary:

Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program are no longer necessary since the program was discontinued in FY 1988 when appropriations for the program ended. The program reimbursed eligible hospitals for services provided to certain high-risk pregnant women and newborns whose family incomes were below 100% of the federal poverty level. Services that were provided through the program are now available through Medicaid-reimbursed services as well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated care.

VA.R. Doc. No. R94-173; Filed October 27, 1993, 11:05 a.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

Title of Regulation: **VR 370-01-000:1. Public Participation Guidelines.**

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

Public Hearing Date: December 21, 1993 - noon.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 D requires that public participation guidelines for solicitation of the input of interested parties in the formation and development or regulations shall be developed, adopted, and utilized by each agency. Although this agency had previously amended public participation guidelines which were effective July 1, 1993, amendments to the Administrative Process Act now require that these guidelines be amended again to reflect the 1993 statutory changes. The additional basis for the adoption of these guidelines is provided in § 9-164(2) which gives the Virginia Health Services Cost Review Council general regulatory making authority.

Purpose: These new guidelines will allow for further identification and notification of interested parties as the regulatory process is pursued by the Virginia Health Services Cost Review Council. The guidelines set out a general policy for the use of standing or ad hoc advisory panels and consultation with the groups and individuals as the regulatory process is followed.

Substance: The guidelines set out methods of seeking input from interested parties or groups and, in addition to identifying those groups, requires that other groups be notified who may be affected by the regulations. They will also receive a Notice of Intended Regulatory Action. The guidelines set out a general policy for the use of standing or ad hoc advisory panels and provide for consultation with groups and individuals registering an interest in working with the agency.

Issues: These regulations will provide the most reasonable approach to attaining the necessary public participation in the development of regulations of the Virginia Health Services Cost Review Council. The primary advantage in this process is that an effort will be undertaken to inform the general public and those interested groups as regulations are promulgated by the Virginia Health Services Cost Review Council. The proposed changes have been written so that clarity and simplicity are assured.

Impact: There is no fiscal impact on any of the health care institutions who are required to report to the Virginia Health Services Cost Review Council. No state general funds will be required to implement these regulations. Changes will be necessary in the operations of the Virginia Health Services Cost Review Council in order to completely implement these guidelines. The number of persons or organizations affected by these regulations cannot be estimated at this time but there should be no negative impact on them because the purpose of these regulations is to ensure public participation.

Summary:

These regulatory changes are necessitated by changes to the Administrative Process Act which were enacted by the 1993 General Assembly.

VR 370-01-000:1. Public Participation Guidelines.

§ 1. Definitions.

A. For the purpose of these public participation guidelines for development of regulations, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless specifically defined in this regulation, terms used shall have the meanings commonly ascribed to them.

C. Terms defined.

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

~~"Approving authority"~~ *"Council"* means the Virginia Health Services Cost Review Council established by Chapter 26 (§ 9-156 et seq.) of Title 9 of the Code of Virginia which has the legal authority to adopt regulations.

"Director" means the executive director and staff of the Virginia Health Services Cost Review Council which positions are established pursuant to the Code of Virginia to implement programs and provide administrative support to the approving authority.

"Governor's Executive Order" means any policy or procedure issued by the Governor under § 2.1-41.1 or § 9-6.14:9.1 A of the Code of Virginia establishing the administrative policy and procedures for gubernatorial review and regulatory actions governed by the Administrative Process Act.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested parties in the formation and development or repeal of regulations and any revision thereto in accordance with the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia. ~~These procedures shall not only be utilized prior to the formation and drafting of regulations, but shall be utilized during the entire formation, promulgation and final adoption process.~~

B. At the discretion of the approving authority or the director, the procedures in § 3 may be supplemented by any means and in any manner to gain additional public participation in the regulation adoption process, provided such means allows for balanced participation by the interested parties.

C. The failure of any person or organization to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with the Administrative Process Act and Governor's Executive Order.

D. Any person may petition the council 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 council shall receive, consider, and respond to such petition within 180 days.

§ 3. ~~Public participation procedures~~ *Mailing list.*

A. The director shall establish and maintain a *mailing* list consisting of ~~parties~~ *groups and individuals* expressing an interest in *working with the council for* the *formation,* adoption, amendment, or repeal of regulations. *This list shall consist of groups and individuals who have indicated an interest in being placed on such a list. In addition, the director shall contact hospital organizations, nursing home organizations, business groups, insurance organizations, consumer groups, and individuals who have indicated an interest in the work of the approving agency regarding whether they wish to be added to the list.*

B. The council may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

C. The council shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

D. Persons or entities on the mailing list described in subsection A shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action;

2. A Notice of Comment Period;

3. A copy of any final regulation adopted by the council; and

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

§ 4. Ad hoc advisory committees.

A. The council or the director may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the council.

B. The ad hoc committee shall provide professional specialization or technical assistance when the council or director determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

C. The advisory committee may be dissolved when the process for promulgating the specific regulation is completed.

§ 5. Public participation guidelines.

~~B.~~ *A.* Whenever the approving authority so directs, or upon his own initiative, the director may commence the regulation adoption process according to these procedures and proceed to draft a proposal.

~~C.~~ *B.* The director shall issue a Notice of Intended Regulatory Action (NOIRA) for all regulatory proposals in accordance with the Administrative Process Act.

1. The NOIRA shall include, in addition to the requirements of the Registrar of Regulations:

a. A statement as to the need for regulatory action.

b. A description, if possible, of alternatives available to meet the need.

c. A request for comments on the intended regulatory action, to include any ideas to assist the director 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 indicating whether a public hearing

will be held on the proposed regulation after it is published.

2. The public comment period for NOIRAs under subdivision ~~C~~ *B* 1 of this section shall be no less than ~~15~~ *30* days after publication in The Virginia Register.

~~D.~~ *C.* The director shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register.

2. Distribution by mail to parties on the list established under subsection A of this section.

D. The director shall also disseminate the NOIRA to any individuals, groups or organizations not on the lists established under § 3 but who may, in his determination, be directly affected by the possible regulatory action. The director shall solicit the input of these individuals, groups or organizations in all situations where the proposed regulatory action will affect them.

E. After consideration of public input, the director may prepare the draft proposed regulation and prepare the Notice of Public Comment (NOPC) and any supporting documentation required for review by the Administrative Process Act and Governor's Executive Order. A summary of comments received in response to the NOIRA shall be distributed to the approving authority for its review. The NOPC shall include, in addition to the requirements of the Registrar of Regulations, a notice of the opportunity to comment on the proposed regulation and a request for comments on the costs and benefits of the proposal. The NOPC shall also state that an analysis of the following has been conducted by the agency and is available to the public upon request:

1. Statement of purpose - why the regulation is proposed and the desired end result or objective of the regulation.

2. Estimated impact:

a. Number and types of regulated entities or persons affected.

b. Projected cost to regulated entities (and to the public, if applicable) for implementation and compliance.

c. Projected cost to agency for implementation and enforcement.

3. Explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

4. An estimate of the impact of the proposed regulation upon small businesses or organizations in Virginia.

5. A discussion of alternative approaches that were considered to meet the need which the proposed regulation addresses, and agency assurance that the proposed regulation is the least burdensome available alternative.

6. A schedule setting forth when, within two years after a regulation is promulgated, the director will evaluate it for effectiveness and continued need.

7. The public comment period shall close no less than 60 days after publication of the NOPC in The Virginia Register.

F. The NOPC may also include the time, date, and location of a public hearing to receive comments on the proposed regulation. The hearing may be held at any time during the public comment period. The hearing may be held in such location as the agency determines will best facilitate input from the affected parties.

G. The director shall prepare a summary of comments received in response to the NOIRA and submit them to the approving authority as part of the agency record.

H. Upon approval of the draft proposed regulation by the approving authority, the agency ~~may~~ *shall* publish the proposal for public comment.

I. The director ~~may~~ *shall* disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register.

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 parties on the list established under ~~subsection A of this section~~ *§ 3 A .*

3. Distribution by mail to parties identified pursuant to subsection D of this section.

J. Concurrently with distribution of the NOPC to the Registrar of Regulations, the director shall submit the proposed regulation and supporting documentation required for review in accordance with the Administrative Process Act and Governor's Executive Order.

K. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act and Governor's Executive Order.

VA.R. Doc. No. R94-159; Filed October 27, 1993, 11:31 a.m.

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

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

Public Hearing Date: December 21, 1993 - Noon
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-164(2) of the Code of Virginia gives the Virginia Health Services Cost Review Council general rule making authority to operate its programs. These generic regulations establish general reporting requirements by all health care institutions for the submission of budgets, quarterly reports, historical, and audit information. Section 9-160(A)(3) requires the Virginia Health Services Cost Review Council to survey all health care institutions regarding commercial diversification. These regulations provide for the submission of the required information. In addition, § 9-160(A)(5) requires nonprofit health care institutions to submit to the council copies of any Form 990s which are required by the Internal Revenue Code. These regulations provide the explanation of how those forms should be submitted to the Virginia Health Services Cost Review Council. Finally, these regulations are amended to conform to the new methodology required by § 9-161.1 of the Code of Virginia.

Purpose: The Commission on Health Care for All Virginians proposed that legislation be introduced in the 1992 Session of the Virginia General Assembly effectuating a number of significant changes regarding the operations of the Virginia Health Services Cost Review Council. A significant part of Senate Bill 518 contained the requirement that the council develop a new methodology for the measurement of efficiency and productivity of hospitals and nursing homes and implement it by January 1, 1993.

The new methodology was effective on January 1, 1993, and it seeks to stimulate competition in the market for hospitals, nursing homes, and ambulatory surgery centers by improving the availability of information to various groups of consumers regarding "efficiency and productivity." A ratio analysis methodology will be used to identify efficient and productive providers.

The changes to these regulations will make them conform to the new methodology that has been adopted by the council. These changes are similar to the changes adopted by the council at its November 1992 meeting and which were adopted for purposes of public comment at its December 1992 meeting. These regulations were readopted on an emergency basis by the council at its June 1993 meeting because they go hand-in-hand with the council's regulations to establish a new methodology to measure efficiency and productivity (VR-370-01-002). Those regulations were also readopted on an emergency basis by the council on June 22, 1993.

Issues: These regulations clarify when health care institutions must submit their proposed budgets for their upcoming fiscal year; the submission of quarterly reports by hospitals; and the submission of historical and audit information which are required 120 days after the completion of a fiscal year. The regulations also clarify when charge masters must be submitted by these health care institutions as well as provide for the implementation of late charges for the failure to submit all of these filings in a timely fashion.

The substance of all of these filings and the process which must be followed to submit them to the council have been discussed with representatives of the relevant trade associations throughout the entire process to develop the new methodology. Those associations have been supportive of the process. Other regulatory processes were initially considered, but the workgroups of the council concluded that the language in SB 518 supported the use of a ratio analysis approach. The council believes that the proposed regulations are the least burdensome available alternative.

When employing ratio analysis, the council will assure the accurate development, reporting, and analysis of individual and aggregate indicators of efficiency and productivity, as well as identification of top performers. The council will also distribute accurate and timely information on provider efficiency and productivity. Different types of consumers (i.e., individuals, employers, insurers, and government) would be expected to use different combinations of available data to make informed purchasing decisions.

Estimated Impact: The council has simplified the reporting requirements for health care institutions in the adoption of the new methodology. In addition, the council has provided for facilities to submit this data pursuant to an electronic data submission system which has been developed and distributed to all health care institutions. Hospitals will be required to submit quarterly reports which are an additional filing requirement, but it is felt that with the reduction in the submission of other information, hospitals are providing significantly less information than they have been required to provide in the past.

With the development of the electronic data submission system, it will be much simpler and thus less financially burdensome for facilities to provide this information.

Summary:

Section 9-161.1 of the Code of Virginia requires that the Virginia Health Services Cost Review Council establish a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparison of the health care institution's performance to national and regional data. The amendments conform this regulation to the requirements of the new methodology.

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

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Adjusted patient days" means inpatient days divided by the percentage of inpatient revenues to total patient revenues.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Patient day" means a unit of measure denoting lodging

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

PART II.
GENERAL INFORMATION.

§ 2.1. Authority for regulations.

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

§ 2.2. Purpose of rules and regulations.

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

§ 2.3. Administration of rules and regulations.

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

§ 2.4. Application of rules and regulations.

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

§ 2.5. Effective date of rules and regulations.

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

§ 2.6. Powers and procedures of regulations not exclusive.

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

PART III.
COUNCIL PURPOSE AND ORGANIZATION.

§ 3.1. Statement of mission.

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

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

The mission of the council is to promote cost containment within Virginia's health care institutions by collecting, analyzing, and disseminating information to the public.

§ 3.2. Council chairman.

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

§ 3.3. Vice-chairman.

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

§ 3.4. Expense reimbursement.

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

§ 3.5. Additional powers and duties.

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

~~PART IV.~~
~~VOLUNTARY COST REVIEW ORGANIZATIONS.~~

~~§ 4.1. Application.~~

~~Any organization desiring approval as a voluntary rate~~

review organization may apply for approval by using the following procedure:

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

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

a. Documentation sufficient to show that the applicant complies with the requirements to be a voluntary cost review organization, including evidence of its nonprofit status. Full financial reports for the one year preceding its application must also be forwarded. If no financial reports are available, a statement of the projected cost of the applicant's operation with supporting data must be forwarded;

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

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

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

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

§ 4.2. Review of application.

A. Designation.

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

B. Disapproval.

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

C. Reapplication.

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

§ 4.3. Annual review of applicant.

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

B. The annual review statement shall include:

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

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

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

§ 4.4. Revocation of approval.

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

§ 4.5. Confidentiality.

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

PART V.
CONTRACT WITH VOLUNTARY COST REVIEW ORGANIZATION.

§ 5.1. Purpose.

It is the intention of the council to exercise the authority and directive of § 9-163 of the Code of Virginia whereby the council is required to contract with any voluntary cost review organization for services necessary

~~to carry out the council's activities where this will promote economy and efficiency, avoid duplication of effort, and make best use of available expertise.~~

~~§ 5.2. Eligibility.~~

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

~~§ 5.3. Contents of contract.~~

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

PART ~~VI~~ *IV*.
FILING REQUIREMENTS AND FEE STRUCTURE.

~~§ 6.1.~~ *§ 4.1.* Each individual health care institution shall file an annual *historical* report of revenues, expenses, other income, other outlays, assets and liabilities, units of service, and related statistics as prescribed in § 9-158 of the Code of Virginia on forms provided by the council together with ~~the~~ *unconsolidated* certified audited financial statements (or equivalents) as prescribed in § 9-159 of the Code of Virginia. The annual *historical* report and the *unconsolidated* certified audited financial statement shall be received by the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. ~~Extensions of filing times for the annual report or the certified audited financial statement may be granted for extenuating circumstances upon a health care institution's written application for a 30-day extension. Such request for extension shall be filed no later than 120 days after the end of a health care institution's fiscal year.~~ The requirement for the filing of an annual *historical* report and ~~a~~ *an unconsolidated* certified audited financial statement may be waived if a health care institution can show that an extenuating circumstance exists. *Requests for a waiver must be submitted in writing prior to the due date.* Examples of an extenuating circumstance include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the annual report filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.

~~§ 6.2.~~ *§ 4.2.* Each individual health care institution shall file annually a projection (budget) of annual revenues and expenditures as prescribed in § ~~9-161 B~~ *§ 9-160 B* of the Code of Virginia on forms provided by the council. The institution's projection (budget) shall be received by the council no later than ~~60~~ *30* days before the beginning of its respective applicable fiscal year. An institution's budget for a given fiscal year will not be accepted ~~for review~~ unless the institution has already filed its annual report and certified audited financial statement for the previous fiscal year. This regulation shall be applicable to nursing homes or certified nursing facilities for each fiscal year starting on or after June 30, 1990. Each health care institution with licensed nursing home beds or certified nursing facility beds shall exclude all revenues, expenses, other income, other outlays, assets and liabilities, units of service and related statistics directly associated with a hospital, continuing care retirement community, or with home for adult beds in the budget filed with the council. For those health care institutions that participate in either the Medicare or Medicaid program, the cost allocation methodology required by the Virginia Department of Medical Assistance Services and Medicare for cost reports submitted to it shall be utilized for filings submitted to the council. Any health care institution that does not participate in the Medicare or Medicaid program may develop and utilize an alternative methodology to determine the nursing home portion of its costs if it chooses not to utilize the cost allocation methodology used by the Department of Medical Assistance Services and Medicare. That methodology shall then be approved by the council and the health care institution must continue to utilize that methodology for all subsequent filings unless a subsequent change is approved by the council.

An amendment or modification in an institution's annual projection that will result in a change in gross patient revenue of less than 1.0% is considered minimal and need not be reported. Also, cumulative changes of less than 1.0% in gross patient revenue need not be reported. All other changes must be reported.

§ 4.3. Each individual hospital shall file a quarterly historical report of revenue, expenses, and related statistics. The hospital quarterly file shall be received by the council no later than 45 days after the end of the respective applicable hospital's quarter end.

§ ~~6.3.~~ *§ 4.4.* Each health care institution shall file annually a schedule of charges to be in effect on the first day of such fiscal year, as prescribed in § ~~9-161 D~~ *§ 9-159 A 4* of the Code of Virginia. The institution's schedule of charges shall be received by the council within 10 days after the beginning of its respective applicable fiscal year ~~or within 15 days of being notified by the council of its approval of the charges, whichever is later~~ .

Any subsequent amendment or modification to the annually filed schedule of charges shall be filed ~~at least 60 days in advance of its effective date, together with supporting data justifying the need for the amendment~~ *within 10 days of the effective date of the revised annual projection* . An institution's proposed amendment or modification to its annually filed schedule of charges shall not be accepted ~~for review~~ unless the institution has complied with all prior filing requirements contained in §§ ~~6.1 and 6.2~~ *4.1 and 4.2* for previous fiscal years. ~~Changes in charges which will have a minimal impact on revenues are exempt from this requirement. Any change in an institution's charges or cumulative changes in charges that will increase or decrease council-approved budgeted gross patient services revenue by less than 1.0% of annual revenue for the remaining portion of the budgeted fiscal year are considered minimal and need not be reported. All other changes must be reported.~~

In addition to the requirement above, a new schedule of charges must be submitted if any of the following conditions exist: (i) the creation or revision of a markup or pricing methodology, or (ii) the creation or revision of charges for new services or products. Amendments or modifications to a schedule of charges that are due only to cost adjustments resulting from the pass through of a markup or pricing methodology that had been implemented since the beginning of the fiscal year are considered minimal as described in § 4.2 and need not be reported.

§ ~~6.3:1.~~ *§ 4.5.* Each health care institution shall file annually a survey of rates charged. For hospitals, the survey shall consist of up to 30 select charges, including semi-private and private room rates. The survey shall also consist of charges of the most frequently occurring diagnoses or procedures for inpatient and outpatient treatment. The charges shall be calculated by taking an average for one month of all patient bills where the requested CPT or ICD-9 code numbers are indicated as the principal diagnosis or procedure. This information shall be received by the council from each hospital no later than April 30 of each year.

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

§ ~~6.3:2.~~ *§ 4.6.* Each health care institution or any corporation that controls a health care institution shall respond to a survey conducted by the council to determine the extent of commercial diversification by such health care institutions in the Commonwealth. The survey shall be in a form and manner prescribed by the council and shall request the information specified in subdivisions a through j below for each affiliate of such health care institution or corporation, if any:

a. The name and principal activity;

b. The date of the affiliation;

c. The nature of the affiliation;

d. The method by which each affiliate was acquired or created;

e. The tax status of each affiliate and, if tax-exempt, its Internal Revenue tax exemption code number;

f. The total assets;

g. The total revenues;

h. The net profit after taxes, or if not-for-profit, its excess revenues;

i. The net quality, or if not-for-profit, its fund balance; and

j. Information regarding related party transactions.

§ ~~6.3:3.~~ *§ 4.6:1.* The information specified in § ~~6.3:2~~ *§ 4.6* shall relate to any legal controls that exist as of the 1st of July of each calendar year in which the survey is required to be submitted. The response to the survey shall include the required information for all affiliates in which the health care institution or any corporation which controls a health care institution has a 25% or greater interest. Information regarding affiliates or organizations that do not have corporate headquarters in Virginia and that do no business in Virginia need not be provided.

§ ~~6.3:4.~~ *§ 4.6:2.* For fiscal years ending on or before June 30, 1992, each health care institution or any corporation that controls a health care institution and that is required to respond to the survey specified in § ~~6.3:2~~ *§ 4.6* shall complete and return the survey to the council by the 31st day of August of 1992.

§ ~~6.3:5.~~ *§ 4.6:3.* For fiscal years ending on or before June 30, 1992, each hospital that reports to the council or any corporation which controls a hospital that reports to the council shall submit an audited consolidated financial statement to the council which includes a balance sheet detailing its total assets, liabilities and net worth and a statement of income and expenses and includes information on all such corporation's affiliates.

§ 4.6:4. For fiscal years ending on or before June 30, 1992,

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

The filings required by this section shall be submitted to the council by the 31st day of August of 1992 or 120 days after the health care institution's fiscal year end, whichever is later.

~~§ 6.3:6~~ *§ 4.6:5.* For fiscal years ending on or after July 1, 1992, each health care institution that reports to the council or any corporation which controls a health care institution that reports to the council shall submit audited consolidated financial statements and consolidating financial schedules to the council which include its total assets, liabilities, revenues, expenses, and net worth.

~~§ 6.3:7~~ *§ 4.6:6.* For fiscal years beginning on or after July 1, 1992, the information required in §§ ~~6.3:2, 6.3:3 and 6.3:6~~ *4.6, 4.6:1, and 4.6:5* shall be due 120 days after the end of the health care institution's fiscal year end.

~~§ 6.3:8~~ *§ 4.7.* Each health care institution that reports to the council, any corporation controlling any such health care institution, and each affiliate of the health care institution or corporation shall submit the health care institution, corporation, or affiliate as an organization exempt from taxes pursuant to § 501(C)(3) of the Internal Revenue Code, a copy of the most recent federal information return (Form 990) which was filed on behalf of the institution, corporation, or affiliate together with all accompanying schedules that are required to be made available to the public by the Internal Revenue Service. Information regarding not-for-profit ~~and for-profit~~ affiliates which do no business in Virginia need not be submitted.

§ ~~6.3:9~~ For fiscal years beginning on or after July 1, 1992, the information required in § ~~6.3:8~~ *this section* shall be due *to the council* 120 days after the completion of the health care institution's fiscal year end. *If the information return (Form 990) has not been filed with the Internal Revenue Service, the due date will be extended to no later than the normal due date to the IRS or any extensions granted.*

~~§ 6.4.~~ *§ 4.8.* All filings ~~prescribed in §§ 6.1, 6.2 and 6.3:2 of~~ *required by* these regulations will be made to the council ~~for its transmittal to any approved voluntary cost review organization described in Part IV of these regulations~~ .

~~§ 6.5.~~ *§ 4.9.* A filing fee based on an adjusted patient days rate shall be set by the council, based on the needs to meet annual council expenses. The fee shall be established and reviewed at least annually and reviewed for its sufficiency at least annually by the council. All fees shall be paid directly to the council. The filing fee shall be no more than 11 cents per adjusted patient day for each health care institution filing. Prior to the beginning of each new fiscal year, the council shall determine a filing fee for hospitals and a filing fee for nursing homes based upon the council's proportionate costs of operation for review of hospital and nursing home filings in the current fiscal year, as well as the anticipated costs for such review in the upcoming year.

~~§ 6.6.~~ *§ 4.10.* Fifty percent of the filing fee shall be paid to the council at the same time that the health care institution files its budget under the provisions of ~~§ 6.2~~ *§ 4.2* of these regulations. The balance of the filing fee shall be paid to the council at the same time the health care institution files its annual report under the provisions of ~~§ 6.1~~ *§ 4.1* of these regulations. ~~When the council grants the health care institution an extension, the balance of the filing fee shall be paid to the council no later than 120 days after the end of the respective applicable health care institution's fiscal year. During the year of July 1, 1989, through June 30, 1990, each nursing home and certified nursing facility shall pay a fee of 7 cents per adjusted patient day when it files its annual report in order to comply with subdivisions A1 and A2 of § 9-159 of the Code of Virginia. Following June 30, 1990, all nursing homes and certified nursing facilities shall submit payment of the filing fees in the amount and manner as all other health care institutions.~~

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

§ 4.11. A late charge shall be paid to the council by a health care institution that files reports or fees past the due date. The late charge may be waived if such a waiver is requested prior to the due date and the health care institution can show that an extenuating circumstance exists. Examples of extenuating circumstances include, but are not limited to, involvement by the institution in a bankruptcy proceeding, closure of the institution, change of ownership of the institution, or the institution is a new facility that has recently opened.

§ 4.12. A late charge of $10 per working day shall be paid to the council by a health care institution that files its annual projection (budget), quarterly historical report, annual historical report, unconsolidated audited financial statements (or extracted equivalent) or fees past the due date.

~~§ 6.8.~~ *§ 4.13.* A late charge of $50 shall be paid to the council by the health care institution that files the charge

schedule past the due date.

§ ~~6.9.~~ *§ 4.14.* A late charge of $25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § ~~6.3:2~~ ~~or~~ ~~file~~ *§ 4.6 including* the audited consolidated financial statement required by § ~~6.3:5~~ *§ 4.6:5* or both.

§ ~~6.10.~~ *§ 4.15.* A late charge of $25 per working day shall be paid to the council by the reporting entity required to complete the survey required in § ~~6.3:1~~ *§ 4.5* .

§ ~~6.11~~ *§ 4.16.* A late charge of $25 per working day shall be paid to the council by the reporting entity required to submit the Form 990s as provided §§ ~~6.3:8~~ ~~and~~ ~~6.3:9~~ *§ 4.7.*

PART ~~VII~~ *V* .
WORK FLOW AND ANALYSIS.

§ ~~7.1.~~ *§ 5.1.* The annual *historical* report data filed by health care institutions as prescribed in § ~~6.1~~ *§ 4.1* of these regulations shall be analyzed as directed by the council. ~~Hospitals that are part of a hospital system will be analyzed on a systemwide basis. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations, may be published and disseminated as determined by the council. The health care institution which is the subject of any summary, report, recommendation or comment shall received a copy of same at least 10 days prior to the meeting at which the same is to be considered by the council.~~

§ ~~7.2.~~ *§ 5.2.* The annual schedule of charges and projections (budget) of revenues and expenditures filed by health care institutions as prescribed in § ~~6.2~~ *§ 4.2* of these regulations shall be analyzed as directed by the council. ~~Hospitals that are part of a hospital chain may have their filings reviewed on a consolidated basis. Summarized analyses and comments shall be reviewed by the council at a scheduled council meeting within approximately 75 days after receipt of properly filed data, after which these summaries and comments, including council recommendations will be published and disseminated by the council. Amendments or modifications to the annually filed schedule of charges shall be processed in a like manner and reviewed by the council no later than 50 days after receipt of properly filed amendments or modifications. Any health care institution which is the subject of summaries and findings of the council shall be given upon request an opportunity to be heard before the council.~~

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

§ ~~8.1.~~ *§ 6.1.* The staff findings and recommendations and related council decisions on individual health care institutions' annual historical data findings will be kept on file at the council office for public inspection. ~~However, the detailed annual historical data filed by the individual health care institutions will be excluded from public inspection in accordance with § 9-159 B, of the Code of Virginia.~~

§ ~~8.2.~~ *§ 6.2.* Periodically, but at least annually, the council will publish the rates charged by each health care institution in Virginia for up to 30 of the most frequently used services in Virginia, including each institution's average semiprivate and private room rates. The data will be summarized by geographic area in Virginia, and will be kept on file at the council office for public inspection and made available to the news media. In addition, annual charge schedules and subsequent amendments to these schedules filed under the provisions of § ~~6.3~~ *§ 4.4* of these rules and regulations will be kept on file at the council office for public inspection. ~~Staff findings and recommendations and related council decisions on changes to health care institutions' rates and charges will also be kept on file at the council office for public inspection and available to the news media.~~

§ ~~8.3.~~ *§ 6.3.* Periodically, but at least annually, the council will publish an annual report which will include, but not be limited to the following: cost per admission comparison, cost per patient day comparison, percentage increase in cost per patient day, budget and historical reports reviewed, interim rate changes, excess operating expenses, revenue reduction recommendations, operating profits and losses, deductions from revenue (contractuals, bad debts, and charity care) and hospital utilization.

§ ~~8.3:1.~~ *§ 6.3:1.* The council will also periodically publish and disseminate information which will allow consumers to compare costs and services of hospitals, nursing homes and certified nursing facilities.

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

§ ~~8.5.~~ *§ 6.4.* The council ~~may~~ *shall* release historical financial and statistical data reported by health care institutions ~~to state or federal commissions or agencies based on individual, specific requests, and the merit of such requests. Requests must list the purpose for which the requested data is to be used to permit the council to reach a valid decision on whether or not the data requested will fit the need and should, therefore, be made available~~ *pursuant to § 9-159 B of the Code of Virginia* . Under no circumstances will data be released which contains "personal information" as defined in § 2.1-379(2) of the Code of Virginia.

§ ~~8.6.~~ ~~The council shall not release prospective (budgeted)~~

~~financial and statistical data reported by health care institutions to anyone, except for the staff findings and recommendations as provided for in § 8.4 of these regulations~~ .

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

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

VA.R. Doc. No. R94-158; Filed October 27, 1993, 11:32 a.m.

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Title of Regulation: **VR 370-01-002. Regulations to Measure Efficiency and Productivity of Health Care Institutions.**

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

Public Hearing Date: December 21, 1993 - Noon
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-161.1 of the Code of Virginia requires the council to promulgate regulations establishing a methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology is to provide for, but not be limited to, comparisons of a health care institution's performance to national and regional data as well as comparisons and a ranking system for facilities within the Commonwealth. Finally, § 9-164 provides the council with general authority to promulgate regulations to further its programs.

Purpose: The Commission on Health Care for All Virginians proposed that legislation be introduced in the 1992 Session of the Virginia General Assembly effectuating a number of significant changes regarding the operations of the Virginia Health Services Cost Review Council. A significant part of Senate Bill 518 contained the requirement that the council develop a new methodology for the measurement of efficiency and productivity of hospitals and nursing homes and implement it by January 1, 1993.

The proposed new methodology was first adopted effective pursuant to emergency regulations adopted by the council at its November 1992 meeting. The new methodology seeks to stimulate competition in the market for hospitals, nursing homes, and ambulatory surgery centers by improving the availability of information to various groups of consumers regarding "efficiency and productivity." A ratio analysis methodology will be used to identify efficient and productive providers. These regulations were readopted on an emergency basis by the council at its June 1993 meeting. The Governor approved the emergency regulations on June 24, 1993.

Substance: The proposed regulations indicate that the council will follow a ratio analysis methodology and use various indicators to measure efficiency and productivity. The regulations further indicate what type of filing submission must be filed and indicate how a ranking system for hospitals and nursing homes will be developed for the various indicators. The regulations further provide that an electronic data submission system will be developed and most facilities will be required to utilize that system. Finally, the regulations exempt certain facilities from the requirement to use the electronic data submission and from the ranking system that will be utilized to indicate efficiency and productivity.

Issues: The primary issue was to determine what would be the least complex and most easily understood methodology to identify efficient and productive providers of health care. The consultants to the council indicated that a ratio analysis methodology would be easily understood. This technique would use ratios that measure elements of charges, costs, resource utilization, financial viability, and community support activities so that institutions' performances can be compared. This process has been discussed with representatives of the relevant trade associations throughout the entire process to develop the new methodology and they have been supportive. Other regulatory processes were initially considered, but the workgroups of the council concluded that the language in SB 518 supported the use of a ratio analysis approach. The council believes that the proposed regulations are the least burdensome available alternative.

When employing ratio analysis, the council will assure the accurate development, reporting, and analysis of individual and aggregate indicators of efficiency and productivity, as well as identify top performers. The council will also distribute accurate and timely information on provider efficiency and productivity. Different types of consumers (e.g, individuals, employers, insurers, and government) would be expected to use different combinations of available data to make informed purchasing decisions.

Impact: No state general funds will be required to implement these regulations. Changes will be necessary in the operations of the council in order to completely implement this new methodology. The process utilized to implement this new methodology will be brought in-house in 1994.

The council is currently supported by filing fees assessed against all licensed hospitals and nursing homes. In the spring of each year, the council establishes assessments against these facilities based upon an adjusted per inpatient day and year expected expenditures. Under the council's current fee structure, there are sufficient funds to implement this new system.

Because the council's new methodology will shorten the filing requirements for each facility, the council anticipates that the projected costs for these facilities to complete the new reporting forms in particular, with the new electronic data submission system, will be reduced from what was expended under the old methodology.

Summary:

This regulation establishes a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparisons of a health care institution's performance to national and regional data.

The regulatory package providing for the new methodology contains the following:

1. A basic description of the new methodology;

2. Relevant definitions to be utilized in the new methodology;

3. A matrix for the evaluation of the best performers by hospitals and nursing homes; and

4. New forms and instructions.

VR 370-01-002. Regulations to Measure Efficiency and Productivity of Health Care Institutions.

PART I.
GENERAL APPROACH.

§ 1.1. Purpose.

The methodology set forth in these regulations is market oriented. Consumers and buyers of health care will receive information from the council that will allow them to make prudent health care decisions.

§ 1.2. Limitations.

Nothing in these regulations or the actions taken by the council pursuant to any of its provisions shall be construed as constituting approval by the Commonwealth or any of its agencies or officers of the reasonableness of any charges made or costs incurred by any health care institution.

§ 1.3. Activities.

The council will collect, analyze, and publish information on health care institutional provider practices relating to efficiency and productivity.

PART II.
DATA SYSTEM.

§ 2.1. Filing.

Each health care institution will submit the following filings:

1. Annual Budget Summary Filing. Each health care institution will submit an Annual Budget Summary Filing as prescribed in § 9-160 B of the Code of Virginia. This filing will provide financial and statistical information to assist purchasers, state policy makers, and other consumers develop projections of future charges and costs. The budget filing shall be received by the council at least 30 days prior to the beginning of the health care institution's fiscal year.

2. Annual Historical Performance Filing. Each health care institution will submit an Annual Historical Performance Filing as prescribed in § 9-158 of the Code of Virginia. This filing will be used to collect audited financial information and other information for all of the categories listed in § 2.2. It will provide the basis for the evaluation of the council. The Annual Historical Performance Filing shall be received by the council within 120 days after the close of the health care institution's fiscal year.

3. Quarterly Historical Performance Filings. Only hospitals, including acute care hospitals, ambulatory surgical hospitals, psychiatric hospitals, and rehabilitation hospitals, will submit Quarterly Historical Performance Filings. All other health care institutions are provisionally exempt from this requirement. Quarterly information will be incorporated into a council data bank so that purchasers may seek current information. The Quarterly Historical Performance Filing shall be received by the council within 45 days after the end of each hospital's fiscal year quarter.

§ 2.2. Categories of information.

Information concerning charges, costs, elements of costs, resource utilization, financial viability, and community support services will be assembled from the filings made pursuant to these regulations.

§ 2.3. Efficiency and productivity indicators.

Individual data elements from the general categories identified in § 2.2 will be used to form ratio indicators. These indicators will be used to evaluate health care institutions and rank health care institutions in relation to their peers.

1. Case mix index. Acute care hospitals shall provide

the council with a case mix index for all inpatients and designated categories of inpatients when it submits its Annual Historical Performance filing. The Medicare DRG grouper process shall be utilized by the council.

2. Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed hospital beds may apply to the council for an exemption to subdivision 1 of this section for calendar year 1993. All hospitals must comply with subdivision 1 of this section in calendar year 1994.

3. Each nursing facility that has received a Patient Intensity Rating System (PIRS) Service Intensity Index (SII) number from the Virginia Department of Medical Assistance Services shall report the four quarterly final PIRS SII scores associated with its fiscal year. These scores are to be reported on the institution's Annual Historical Performance Filing.

§ 2.4. Mortality indicator.

Each hospital will indicate in its Annual Historical Performance Filing whether or not its Health Care Financing Administration (HCFA) mortality rates, overall and for all subcategories, are within HCFA's expected mortality ranges. This information will not be used to measure the relative efficiency and productivity of a hospital in 1993.

§ 2.5. Electronic submission of data.

Information shall be submitted electronically.

1. Information shall be submitted using software developed by the council for the use of health institutions in submitting filings.

2. Any health care institution that does not have the computer equipment to submit electronically may apply to the council for an exemption to subdivision 1 of this section. Beginning January 1994, a fee commensurate with the cost of data entry will be assessed by the council.

§ 2.6. Public access to data.

The council will publish an annual report which will incorporate the data collected and analysis of the data including, but not limited to, an evaluation of the relative efficiency and productivity of health care institutions. An electronic data base will be available to the public in 1994.

PART III.
EVALUATION OF EFFICIENCY AND PRODUCTIVITY.

§ 3.1. Initial measurement.

The performance of each health care institution will be measured using the indicators referenced in § 2.3.

§ 3.2. Ranking.

Unless exempted as provided for in § 3.4, each health care institution will be subject to a ranking procedure.

1. Regional peer grouping. Similar types of health care institutions (e.g., all hospitals or all nursing homes) will be grouped into geographical peer groups and ranked in relation to other institutions within their peer group.

2. Ranking procedure. Each health care institution will be ranked on each indicator and given a quartile score on each indicator. Each quartile represents 25% of institutions within the peer group. Each institution will be given a score of 1, 2, 3, or 4 on each indicator depending upon the quartile in which they fall. A quartile score of 1 on an indicator means that an institution ranked in the top quartile (top 25%) on that indicator. Quartile scores are summed over all indicators. The total is divided by the number of indicators to get an average quartile score. The top performers will be selected by using the average quartile score and identifying the top 25% of institutions within each peer group.

§ 3.3. Other peer groupings.

Health care institutions may be sorted into other peer groupings (e.g., bed size, urban/rural, system/nonsystem) for purposes of analysis.

§ 3.4. Exemptions from the ranking procedure.

During calendar year 1993, some institutions will be exempt from the ranking procedure as described below:

1. Small hospitals. Freestanding (i.e., nonsystem) hospitals with fewer than 100 licensed beds that are exempt pursuant to subdivision 2 of § 2.3.

2. Psychiatric hospitals.

3. Rehabilitation hospitals.

4. Ambulatory surgery hospitals.

5. Continuing care retirement communities.

6. Children's specialty hospitals.

7. Subacute care hospitals.

NOTICE: The forms used in administering the Regulations to Measure Efficiency and Productivity of Health Care Institutions 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 Office of the Virginia Health Services Cost Review Council, 8th

Street Office Building, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Psychiatric Hospital Annual Budget Filing Form (01-05-693, 6/14/93)
Psychiatric Hospital Quarterly Filing Form (02-05-693, 6/14/93)
Psychiatric Hospital Annual Historical Filing Form (8/30/93)
Indicator Definitions - Psychiatric Hospitals Form (5/11/93)
Ambulatory Surgical Hospital Annual Budget Filing Form (8/30/93)
Ambulatory Surgical Hospital Quarterly Filing Form (8/30/93)
Ambulatory Surgery Hospital Annual Historical Filing Form (8/30/93)
Indicator Definitions - Ambulatory Surgery Hospitals Form (8/30/93)
Nursing Home Annual Budget Filing Form (8/30/93)
Nursing Home Annual Historical Filing Form (8/30/93)
Hospital and Nursing Home Reconciliation Worksheet (8/30/93)
Hospital Annual Historical Filing Form (8/30/93)
Hospital Annual Budget Filing Form (8/30/93)
Hospital Quarterly Filing Form (8/30/93)
Indicator Definitions - Hospitals (8/30/93)
Rehabilitation Hospital Annual Budget Filing Form (01-06-693, 6/14/93)
Rehabilitation Hospital Quarterly Filing Form (02-06-693, 6/14/93)
Rehabilitation Hospital Annual Historical Filing Form (8/30/93)
Indicator Definitions - Rehabilitation Hospitals Form (4/27/93)

VA.R. Doc. No. R94-161; Filed October 27, 1993, 11:26 a.m.

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Title of Regulation: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data System.**

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

Public Hearing Date: December 21, 1993 - noon

Written comments may be submitted through January 14, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-166.4 of the Code of Virginia requires the executive director of the council to enter into a contract with a nonprofit, tax-exempt health data organization for the storage and analysis and evaluation of patient level data. It further requires that certain regulations be adopted by the council concerning the Patient Level Data Base System. Finally, § 9-164 gives the council general regulatory making authority to operate its programs.

Purpose: The Joint Commission on Health Care for All Virginians introduced legislation in the 1993 Session of the Virginia General Assembly to establish a patient level data base system in Virginia. The legislation required that the executive director of the council contract with a nonprofit, tax-exempt health data organization which will compile, store, analyze, and evaluate patient level data base. The legislation further requires that the council adopt reasonable fees for the filing of patient level data and regulations which will require hospitals to submit patient level data either to the council or to the nonprofit, tax-exempt organization.

These regulations fulfill all the requirements of the council for the establishment of a Patient Level Data Base System.

Substance: These regulations establish the filing requirements of patient level data by hospitals regarding inpatient discharges. They also establish the fees which must be complied with as well as the various alternatives for the submission of the data. The regulations also provide for confidentiality of certain filings and clarify the type of nonprofit health data organization the executive director shall contract with to fulfill the requirements of the Patient Level Data Base System.

Issues: These regulations were developed with significant input from the board members of the nonprofit health data organization and its staff; representatives of the Virginia Hospital Association; contractors and other individuals who have expertise in the establishment of a patient level data system; members of the council; and council staff. These regulations specifically deal with filing requirements of patient level data and an attempt has been made to add clarifying definitions to the specific patient level data base elements which must be submitted by each inpatient hospital for their discharges. In addition, specific references have been made regarding where hospital staff can find assistance from manuals and other documents to aid in providing specific patient level information required by statute. Because of the input from all of these different sources, it is the belief of the council that the proposed regulations are the least burdensome available alternative to the collection of this data.

Impact: $300,000 general fund moneys have been allocated this year to help implement these regulations and create the patient level data system. Hospitals also will be paying at least 65 cents per patient discharge for the preparation and cleaning of the patient level information for each patient discharge after July 1, 1993. It is not known what the additional fiscal impact will be on inpatient hospitals to collect all of the data elements which are required in the statute.

Summary:

The Joint Commission on Health Care for All Virginians introduced legislation in the 1993 Session of the Virginia General Assembly to establish a patient level data base system in Virginia. The legislation

requires that the executive director contract with a nonprofit, tax-exempt health data organization which will compile, store, analyze, and evaluate patient level data. The legislation further requires that the council adopt reasonable fees for the filing of patient level data and regulations which will require hospitals to submit patient level data either to the council or to the nonprofit, tax-exempt organization.

Recently, a nonprofit, tax-exempt health data organization has been incorporated in Virginia by the name of Virginia Health Information Corporation (VHI). Many of the members of that board attended a retreat held last fall by Howard M. Cullum, Secretary of Health and Human Resources, to lay the ground work for the establishment of a patient level data base system in Virginia.

The executive director has determined that pursuant to § 9-166.4 he will contract with VHI to have that organization compile, store, analyze, and evaluate patient level data.

VR 370-01-003. Regulations of the Virginia Health Services Cost Review Council Patient Level Data System.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

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

"Complete filing" means that patient level data of at least 99% of a hospital's inpatient discharges for a calendar year quarter are submitted.

"Inpatient hospital" means a hospital providing inpatient care and licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia, a hospital licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 of the Code of Virginia, or a hospital operated by the University of Virginia or Virginia Commonwealth University.

"Nonprofit organization" means a nonprofit, tax-exempt health data organization with expertise and capacity to execute the powers and duties set forth for such entity in Chapter 26 (§ 9-156 et seq.) of Title 9 of the Code of Virginia.

"Processed, verified data" means data on inpatient records which have been subjected to edits. These edits shall be applied to data elements which are on the UB-82 Billing Form (or a successor Billing Form adopted by the Virginia Uniform Billing Committee for use by inpatient hospitals in Virginia). The edits shall have been agreed to by the executive director of the council and VHI. Inpatient records containing invalid UB-82 codes or all blank fields for any of the data elements subjected to edits shall be designated as error records. At least 98% of a complete filing of all records which are submitted by an inpatient hospitals in aggregate per calendar year quarter and which are subjected to these edits must be free of error for data to be considered processed and verified.

"System" means the Virginia Patient Level Data System.

"Virginia Health Information" or VHI" means the Virginia nonstock corporation organized for the purpose of operating as a nonprofit, tax-exempt health data organization, with which the executive director has entered into a contract as required by § 9-166.4 of the Code of Virginia.

PART II.
PATIENT LEVEL DATA ELEMENTS.

§ 2.1. Reporting requirements for patient level data elements.

Every inpatient hospital shall submit each patient level data element listed below for each hospital inpatient, including a separate record for each infant, if applicable. Most of these data elements are currently collected from a UB-82 Billing Form. The column for a "Form Locator" indicates where the data element is located on the UB-82. For those elements, a column for the "Page Number" from the Uniform Billing Manual (UB-82), Revised on July 1989, which has been prepared for Virginia Hospitals by the Virginia Uniform Billing Committee, is also provided which details a field description and any special instructions pertaining to that element. An asterisk (*) indicates when the required data element is either not on the UB-82 or in the Uniform Billing Manual. The instructions provided under that particular data element should then be followed. If a successor Billing Form to the UB-82 form is adopted by the Virginia Uniform Billing Committee for use by inpatient hospitals in Virginia, information pertaining to the data elements listed below should be derived from that successor billing form.

	Form Locator	Page Number
1. Hospital identifier	1	10
2. Attending physician identifier Enter the six-digit nationally assigned Uniform Physician Identification Number (UPIN) for the physician assigned as the attending physician for an inpatient.	92	*
3. Operating physician identifier Enter the six-digit nationally assigned UPIN for the physician identified as the operation physician for each inpatient procedure reported for up	93	*

to six procedures.

4. Payor identifier	57	119-124
5. Employer identifier	73	148
6. Patient identifier Enter the nine-digit social security number of the patient. If a social security number has not been assigned, (i.e., for an infant) leave blank.	*	*
7a. Patient sex	13	29
7b. Race Code If an inpatient hospital collects information regarding the choices listed below, the appropriate one digit code reflecting the race of the patient should be entered. If a hospital only collects information for categories 0, 1, or 2, then the appropriate code should be entered from those three selections.	*	*
7c. Date of Birth	12	28
7d. Century Indicator	35, 36, 37, 38, 39=17	28
7e. Zip Code	11	27
7f. Patient relationship to insured	67A, B, C	135-137
7g. Employment status code	72	146-147
7h. Discharge (i.e., Patient) Status	21	38
7i. Birth weight (for infants) Enter the birth weight in grams of newborns.	*	*
8a. Admission type	17	33
8b. Admission Source	18	35
8c. Admission Date	15	31
8d. Admission Hour	16	32
8e. Admission Diagnosis	27	44
9. Discharge Date Only enter date of discharge.	22	39
10. Principal Diagnosis	77	152
Enter Secondary Diagnoses (up to 8) In addition, include diagnoses recorded in the comments section for DX6-DX9.	78,79,80,81	153
11. External cause of injury Record all external cause of injury codes in secondary diagnoses position after recording all treated secondary diagnoses.	*	*
12. Principal Procedure	84	156-157
Enter Other Procedures and dates (up to 5). In addition, include procedures recorded in the comments section for PX4-PX6.	83	155
13. Revenue Center Code (up to 23)	51	80-114
Revenue Center Units (up to 23)	52	115
Revenue Center Charges (up to 23)	53	116
14. Total Charges	53	116

0 = White
1 = Black
2 = Other
3 = Asian
4 = American Indian
5 = White Hispanic
6 = Black Hispanic

(R.C. Code 001 is for total charges.
See page 81.)

PART III.
FILING FORMAT.

§ 3.1. Options for filing format.

Inpatient hospitals of 100 beds or larger that submit patient level data directly to the council or VHI shall submit it in an electronic data format. Hospitals of less than 100 beds that submit patient level data directly to the council or VHI may directly submit it in electronic data format or in hard copy. If hard copy is utilized the hospital shall submit, for each inpatient discharged, a copy of the UB-82 and an addendum sheet for those data elements not collected on the UB-82 or defined in the Uniform Billing Manual. These hospitals must submit all patient level data in electronic data format by January 1, 1995.

If a hospital submits processed, verified data directly to VHI, it shall be in electronic format.

PART IV.
SUBMISSION PROCEDURE.

§ 4.1. Options for submission.

Each inpatient hospital shall submit the patient level data to the council for processing and verification. If data is submitted in this fashion, the council will transmit it to VHI along with any fees submitted by the hospital to the council for the processing and verification of such data.

As an alternative to submitting the patient level data to the council, an inpatient hospital may submit the patient level data to the office of VHI for processing and verification. If this alternative is chosen data shall be submitted to the following address:

Virginia Health Information Corporation
Post Office Box 8727
Richmond, Virginia 23226

If a hospital chooses this alternative it shall notify the council and the VHI of its intent to follow this procedure.

In lieu of submitting the patient level data to the council or to VHI, an inpatient hospital may submit already processed, verified data to VHI. If an inpatient hospital chooses this alternative for submission of patient level data, it shall notify the council and the VHI of its intent to utilize this procedure.

If an inpatient hospital decides to change the option it has chosen, it shall notify the council of its decision 30 days prior to the due date for the next submission of patient level data.

§ 4.2. Contact person.

Each hospital shall notify in writing the council and VHI of the name, address, telephone number and fax number of a contact person. If a hospital's contact person changes, the council and VHI shall be notified in writing as soon as possible of the name of the new person who shall be the contact person for that hospital.

§ 4.3. Frequency of submission.

A. Inpatient hospitals shall submit patient level data for inpatients at least on a calendar year quarterly basis. If the data is submitted to the council or to VHI for processing and verification, it shall be received at the office of the council or the office of VHI within 45 days after the end of each calendar year quarter.

B. If inpatient hospitals choose to submit processed, verified data directly to VHI, it shall be received at the office of the VHI within 120 days after the end of each calendar year quarter.

PART V.
FILING FEES.

§ 5.1. Establishment of annual fee.

The council shall prescribe a reasonable fee not to exceed one dollar per discharge for each inpatient hospital submitting patient level data pursuant to these regulations to cover the cost of the reasonable expenses in processing and verifying such data. The fee shall be established and reviewed annually by the council. Payment of the fee by a hospital shall be at the time quarterly inpatient data is submitted.

§ 5.2. Payment of fee to nonprofit organization.

If an inpatient hospital chooses to submit its patient level data directly to VHI, that hospital may pay the fee described in § 5.1 to VHI at the time it submits its quarterly data. If a hospital pays its fee directly to VHI, the requirements of a fee to be paid to the council, as described in § 5.1, shall be waived by the council.

§ 5.3. Waiver or reduction of fee.

If a hospital submits processed, verified patient level data to VHI, VHI may, in its discretion, grant a waiver or reduction of the fee if it determines that the hospital has submitted properly processed, verified data.

§ 5.4. Late charge.

A late charge of $25 per working day shall be paid to the council by an inpatient hospital that does not submit, in aggregate, a complete filing of the patient level data required in Part II for all inpatients discharged in a calendar year quarter pursuant to the times established in § 4.3. This requirement may be waived by the council if an inpatient hospital can show that an extenuating circumstance exists. Examples of extenuating circumstance include, but are not limited to, the installation of a new computerized billing system, a bankruptcy proceeding, closure of the institution, change of ownership in the institution, or the institution is a new facility that has recently opened.

VA.R. Doc. No. R94-160; Filed October 27, 1993, 11:33 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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.

Public Hearing Date: N/A – Written comments may be submitted through January 14, 1994.

Basis: Section 32.1-324 of the Code of Virginia 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. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Sections 32.1-343 through 32.1-350 of the Code of Virginia 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.

Purpose: The purpose of this proposal is to modify the state/local hospitalization fiscal year to limit the allocation of remaining state funds and limit the use of funds allocated for one fiscal year to that year.

Substance and Issues: 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% 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. The fund will be reallocated for payment of the following fiscal year claims.

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. This change is advantageous to the public because the agency will be better able to forecast the funds necessary to cover anticipated medical needs for those eligible to the SLH program.

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, nor will these regulations require a change in the accounting systems of the participating local governments.

Summary:

The changes to this regulation modify the state/local hospitalization fiscal year, 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. This proposed regulation is identical to the emergency regulation currently in effect.

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. *of the Code of Virginia.*

"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 of 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 *of Virginia* ; 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 *of Virginia* 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 *of Virginia* 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 *of Virginia* 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 *of Virginia* .

"Director" means the Director of the Department of Medical Assistance Services established by § 32.1-323 of the Code *of Virginia* .

"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 *of the Code of Virginia* , 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.

"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 payment year" means a year beginning May 1 of any year and ending April 30 of the following year.

"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. *Program established.*

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 *of Virginia* .

§ 2.2. Allocation of funds.

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 of the 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 *of Virginia* . 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 *of Virginia* . 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 services 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 *of Virginia* . 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 nonfarm 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 *of Virginia* .

§ 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 *of Virginia* . 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. R94-93; Filed October 18, 1993, 3:23 p.m.

BOARD FOR OPTICIANS

Title of Regulation: **VR 505-01-0. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 505-01-0:1. Public Participation Guidelines.**

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

Public Hearing Date: N/A – Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: Sections 9-6.14:7.1 and 54.1-201.5 of the Code of Virginia provide the Board for Opticians with the statutory authority to promulgate Public Participation Guidelines. The board is empowered to promulgate regulations to establish entry requirements for licensure and standards of practice and conduct for opticians.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the legislative changes to the APA made by the 1993 Virginia General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of opticians in Virginia.

Substance: Legislative changes enacted to the Administrative Process Act prompted the repeal of the existing public participation guidelines and the adoption of new emergency public participation guidelines for the Board for Opticians on June 29, 1993. The proposed Public Participation Guidelines for the Board for Opticians contain substantially similar language to the emergency regulations, which are in effect until June 28, 1994. Therefore, there is no change from the current status of the law.

Issues: The proposed PPG's will give interested parties as well as the general public the opportunity to participate in the formation and development of optician regulations. Such participation will be advantageous to the public since they will become more familiar with the contents and expectations of the licensure requirements and regulations. The advantage to the agency is such that with public knowledge of the regulations, the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed opticians Public Participation Guidelines affect approximately 1,350 licensed opticians.

Since the proposed public participation guidelines are substantially similar to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of these regulations.

Summary:

The Board for Opticians Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of opticians. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The proposed PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption of regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and includes the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in the Virginia Register.

VR 505-01-0:1. 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" or "board" means the Board for Opticians.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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.

§ 8. 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade associations' mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6 and 8 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. Nos. R94-166 and R94-167; Filed October 27, 1993, 12:02 p.m.

BOARD OF PROFESSIONAL COUNSELORS

Title of Regulation: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.**

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

Public Hearing Date: December 13, 1993 - 9 a.m.
Written comments may be submitted until February 13, 1994.
(See Calendar of Events section for additional information)

Basis: Sections 54.1-113, 54.1-2400, 54.1-2510, and 54.1-3500 through 54.1-3506 of the Code of Virginia provide the statutory basis for promulgation of the regulations by the Board of Professional Counselors. Proposed regulations on fee changes are submitted for public comment under this general authority. Section 54.1-113 of the Code of Virginia requires the board to adjust fees so that fees are sufficient but not excessive to cover the board's operational expenses. Section 1.3 of the regulation responds to this requirement.

Purpose: These regulations are designed to ensure the public protection by establishing standards for certification, examination, training and practice of certified substance abuse counselors. The purpose of the proposed amendments is to adjust revenues to meet, but not to exceed expenses, as required by Virginia law. The regulations also set examination costs to the candidate for written examination selected by the board during the competitive bid process.

Substance: Section 1.3 establishes fees as required by the board. Fees have been adjusted as follows:

1. The written examination fee has been adjusted from $100 to $120 because this is the contracted fee charged to each candidate by the examination service.

2. The certification renewal fee has been adjusted from $50 to $40 in order for the board to comply with the Code of Virginia requirement that revenue not exceed the budget by more than 10%.

Issue: Section 1.3 responds to statutory requirements. The cost of the examination is a direct charge to the candidate for the examination and score report.

Impact:

A. Number of regulated entities affected:

a. 616 certified substance abuse counselors.
b. 300 trainees.

B. Projected cost for implementation of proposed regulations:

1. Agency cost:

a. Decreased renewal fees: no cost to agency.

b. Fees for written examination: no cost to agency.

2. Projected cost of compliance with proposed regulations to licensee:

a. Renewal fees: annual savings of $10 to each certified substance abuse counselor.

b. Examination fee: increase of $20 to each candidate approved for the written examination.

Summary:

The proposed regulations establish requirements governing the certification of substance abuse counselors in the Commonwealth. They include requirements necessary for certification, criteria for the examinations, standards of practice, and procedures for the disciplining of certified substance abuse counselors.

The proposed regulations respond to a biennial review conducted in accordance with the board's Public Participation Guidelines. The review of the regulations resulted in proposals for new regulations and revisions to existing regulations related to examination fee changes and certification renewal fee

reductions. All relevant documents are available for inspection at the office of the Board of Professional Counselors, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717, telephone (804) 662-9912.

VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.

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 an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor.

"Appropriately credentialed authority" means an entity licensed by an agency of the Commonwealth to render the services of substance abuse counselors.

"Board" means the Virginia Board of Professional Counselors.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor.

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Didactic" means teaching-learning methods which impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and

2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in §§ 2.1 A and 2.3 D of these regulations.

§ 1.2. Cross-referencing.

These regulations are incorporated by reference in VR 560-01-02 Regulations Governing the Practice of Professional Counseling.

§ 1.3. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors:

Registration of supervision	$ 25
Application processing	50
Examination	~~100~~ *120*
~~Reexamination~~	~~100~~
Certification renewal	~~50~~ *40*
Duplicate certificate	15
Late renewal	10
Replacement of or additional wall certificate	15
Name change	10
Returned check	15

B. ~~Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors.~~ *Fees shall be paid by check or money order.*

Examination fees shall be made payable to the examination service and mailed directly to the examination service.

All other fees shall be made payable to the Treasurer of Virginia and forwarded to the Board of Professional Counselors.

PART II.
REQUIREMENTS FOR CERTIFICATION.

§ 2.1. Certification, general.

No person shall use the title of "certified substance abuse counselor" in the Commonwealth of Virginia except as provided in these regulations.

A. 1. A certified substance abuse counselor is employed to deliver substance abuse counseling in a state-approved public or private facility.

2. In every instance there shall be an identifiable

appropriately credentialed individual or authority to provide supervision.

B. A candidate for certification as a substance abuse counselor shall meet all the requirements of these regulations, including passing the examination prescribed in § 3.1 General examination requirements.

C. Prerequisite to examination.

Every prospective applicant for examination for certification by the board shall:

1. Meet the educational requirements prescribed in § 2.2 of these regulations;

2. Register supervision with the board at least one year before applying, using the appropriate form and paying the fees prescribed by the board. The board, in its discretion, may waive this one-year period for an applicant who has met the work experience requirements prescribed in § 2.3;

3. Meet the experience requirements prescribed in § 2.3;

4. Meet the requirements of character and professional integrity prescribed in § 2.4; and

5. Submit to the executive director of the board, at least ~~60~~ *90* days prior to the date of the written examination:

a. A completed application form;

b. Documented evidence of having fulfilled the education, supervision, experience, and references required in subdivisions 1, 2, 3, and 4 of this subsection;

c. Reference letters from three health or mental health care professionals attesting to the applicant's character and professional integrity; and

d. The examination fee prescribed in § 1.3 of these regulations.

D. Every applicant for examination shall take the examination at the time prescribed by the board.

E. The board may certify by endorsement an individual who is currently certified in another state as a substance abuse counselor and who has been certified in another state through a similar process with equivalent requirements as described in this section.

§ 2.2. Educational requirements.

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have an official high school diploma or general educational development (GED) certificate: and

2. Have completed 400 clock hours of substance abuse education from one of the following programs:

a. An accredited university or college;

b. An integrated program approved by the board; or

c. An individualized program of seminars and workshops to be approved by the board at the time of application.

B. Substance abuse education.

1. The education will include 220 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of 10 clock hours in each of the following six areas:

a. Understanding the dynamics of human behavior;

b. Signs and symptoms of substance abuse;

c. Counseling and treatment approaches, substance abuse research, group therapy, and other adjunctive treatment and recovery support groups;

d. Continuum of care and case management skills;

e. Recovery process and relapse prevention methods;

f. Ethics and professional identity.

2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:

a. Screening clients to determine eligibility and appropriateness for admission to a particular program.

b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program.

c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client.

d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan.

e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes.

f. Counseling the client utilizing specialized skills in

both individual and group approaches to achieve treatment goals and objectives.

g. Case management activities which bring services, agencies, people and resources together in a planned framework of action to achieve established goals.

h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress.

i. Education of clients by providing information about drug abuse and available services and resources.

j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources.

k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client-related data.

l. Consultation with other professionals to assure comprehensive quality care for the client.

Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program will not be accepted as any part of the educational experience.

§ 2.3. Experience requirements.

A. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the delivery of clinical substance abuse counseling services.

B. The work experience shall be supervised by a board approved licensed professional or certified substance abuse counselor. In every instance there shall be an identifiable appropriately credentialed individual or authority to provide supervision.

C. The supervised experience shall include at least two hours per week of face-to-face consultation between the supervisor and the applicant.

D. Supervision shall be provided under this section according to the following requirements:

1. The supervision contract provided by the board shall be completed and signed by the applicant and the supervisor.

2. The supervisor shall assume responsibility for the professional activities of the applicant.

3. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.

4. The supervisor shall provide supervision only for those substance abuse counseling services which he is qualified to render.

5. Group supervision involving up to six members in a group will be acceptable for one hour of the two hours per week of supervision required in subsection C of this section, substituting on the basis of two hours of group supervision equaling one hour of individual supervision. In no case shall a person receiving supervision receive less than one hour of face-to-face individual supervision per week.

6. Supervision must be provided by a professional who has had specialized training or experience in substance abuse counseling or a certified substance abuse counselor approved by the board.

7. A board approved supervisor shall:

a. Be a licensed professional counselor, licensed clinical psychologist, licensed psychologist, licensed clinical social worker, medical doctor, or registered nurse with a minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in § 2.2 B 1 a through f; or

b. Be a substance abuse counselor certified by the board who has:

(1) Board recognized national certification in substance abuse counseling; and

(2) Has two years experience as a board certified substance abuse counselor.

8. At the time of formal application for certification, the board approved supervisor shall document for the board the applicant's total hours of supervision, length of work experience, competence in substance abuse counseling and any needs for additional supervision or training.

9. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

10. The applicant shall keep the board informed of his current supervisor's license or certificate number, business address, and phone number. The board shall be informed within 30 days of any changes in the applicant's supervision.

§ 2.4. Documentation of supervision.

Applicants must document successful completion of their

supervised experience on appropriate forms at the time of application. Supervised experience obtained prior to May 8, 1991, may be accepted towards certification if this supervised experience met the board's requirements which were in effect at the time the supervision was rendered.

§ 2.5. Character and professional integrity.

If the applicant has been under treatment for substance abuse within the last four years, the applicant shall provide a written statement from the certified or licensed individual responsible for the treatment. The written statement shall address the capability of the applicant to assume the responsibilities of a certified substance abuse counselor.

PART III.
EXAMINATIONS.

§ 3.1. General examination requirements.

A. Every applicant for certification as a substance abuse counselor shall take a written examination approved by the board and achieve a passing score as defined by the board.

B. A written examination will be given at least once each year. The board may schedule such additional examinations as it deems necessary.

1. The executive director of the board shall notify all applicants in writing of the time and place of the examination for which they have been approved to sit.

~~2. If the applicant fails to appear for the examination without providing written notice at least one week before the examination, the examination fee shall be forfeited.~~

~~3.~~ *2.* The executive director will notify all applicants in writing of their success or failure on any examination.

~~4.~~ *3.* The applicant shall submit the applicable fees as prescribed in § 1.3.

§ 3.2. Written examination.

The written examination shall consist of objective, multiple-choice, or essay questions.

PART IV.
RENEWAL AND REINSTATEMENT.

§ 4.1. Annual renewal of certificate.

Every certificate issued by the board shall expire on June 30 of each year.

A. Along with the renewal application, the certified substance abuse counselor shall submit the renewal fee prescribed in § 1.3.

B. Failure to receive a renewal notice and application form(s) shall not excuse the certified substance abuse counselor from the renewal requirement.

§ 4.2. Reinstatement.

A. A person whose certificate has expired may renew it within four years after its expiration date by paying the penalty fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.

B. A person who fails to renew a certificate for four years or more shall:

1. Pay the late renewal fee prescribed in § 1.3 and the certification fee prescribed for each year the certificate was not renewed.

2. Provide evidence satisfactory to the board of current ability to practice as evidenced by:

a. Continuous practice of substance abuse counseling during the preceding two years and completion of 20 hours of continuing education in substance abuse counseling per year for the preceding two years, or

b. Completing at least 40 hours of substance abuse education in the preceding 12 months.

§ 4.3. Legal name change.

A certified substance abuse counselor whose name is changed by marriage or court order may:

1. Notify the board of such change and provide a copy of the legal paper documenting the change.

2. Pay the "name change" fee prescribed in § 1.3.

3. Request and obtain from the board a new certificate bearing the individual's new legal name and pay the fee prescribed in § 1.3.

PART V.
STANDARDS OF PRACTICE; DISCIPLINARY ACTIONS; REINSTATEMENT.

§ 5.1. 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.

1. A certified substance abuse counselor is employed to deliver substance abuse counseling in a state-approved public or private facility.

2. In every instance there shall be an identifiable individual or authority that is appropriately credentialed to provide supervision.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Keep confidential their counseling relationships with clients, except: (i) when the client is a danger to self or others; and (ii) when the counselor is under court order to disclose information.

7. Disclose counseling records to others only with written consent of the client.

8. Not engage in dual relationships with clients, former clients, supervisees and supervisors that are harmful to the client's, former client's, or supervisee's well being, or which would impair the substance abuse counselor's or supervisor's objectivity and professional judgment, or increase the risk of client or supervisee exploitation. This prohibition includes, but is not limited to, such activities as counseling close friends, employees or relatives; or engaging in sexual intimacies with clients, supervisees, or supervisors.

§ 5.2. Grounds for revocation, suspension, probation, reprimand, censure or denial of renewal of certificate; petition for rehearing.

A. In accordance with § 54.1-2400(7) of the Code of Virginia, the board may revoke, suspend or decline to renew a certificate based upon the following conduct:

1. Conviction of a felony or misdemeanor involving moral turpitude.

2. Procuring a certificate by fraud or misrepresentation.

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public; or if one is unable to practice substance abuse counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition.

4. Negligence in professional conduct or nonconformance with the standards of practice outlined in § 5.1 B of these regulations.

5. Performance of functions outside the board-certified area of competency.

6. Violation of or aid to another in violating any provision of Chapter 35 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.

B. Petition for rehearing.

A petition may be made to the board for a rehearing upon good cause shown or as a result of substantial new evidence having been obtained which would alter the determination reached in subsection A of this section.

§ 5.3. Reinstatement following disciplinary action.

A. Any person whose certificate has been revoked or denied renewal by the board under the provisions of § 5.2 must submit a new application for certification to the board.

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 certified upon payment of the appropriate fees applicable at the time of reinstatement.

NOTICE: The forms used in administering the Regulations Governing the Certification of Substance Abuse Counselors 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 Professional Counselors, 6606 W. Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Application for Certification as a Substance Abuse Counselor

Registration of Supervision for Substance Abuse Counselor Certification

Substance Abuse Counselor Verification of Supervision

VA.R. Doc. No. R04-147; Filed October 27, 1993, 10:45 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Title of Regulation: **VR 190-00-01. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 190-00-03. Polygraph Examiners Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-1802 of the Code of Virginia.

Public Hearing Date: N/A Written comments may be submitted until January 15, 1994.
(See Calendar of Events section for additional information)

Basis: Sections 9-6.14:7.1, 54.1-201 and 54.1-1802 of the Code of Virginia provide the director with the statutory authority to promulgate Public Participation Guidelines for the Polygraph Examiners Advisory Board. The director is empowered to promulgate regulations to establish entry requirements for licensure and standards of practice and conduct for polygraph examiners.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the legislative changes to the APA made by the 1993 Virginia General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of polygraph examiners in Virginia.

Substance: Legislative changes enacted to the Administrative Process Act prompted the repeal of the existing public participation guidelines and the adoption of new emergency public participation guidelines for the Polygraph Examiners Advisory Board on June 24, 1993. The proposed Public Participation Guidelines for the Polygraph Examiners Advisory Board contain substantially similar language to the emergency regulations, which are in effect until June 23, 1994. Therefore, there is no change from the current status of the law.

Issues: The proposed PPG's will give interested parties as well as the general public the opportunity to participate in the formation and development of regulations for polygraph examiners. Such participation will be advantageous to the public since they will become more familiar with the contents and expectations of the licensure requirements and regulations. The advantage to the agency is such that with public knowledge of the regulations, the agency should save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Polygraph Examiners Public Participation Guidelines affect approximately 200 licensed polygraph examiners. Since the proposed Public Participation Guidelines are substantially similar to the current emergency Public Participation Guidelines, there will be no additional cost to the agency in the implementation and compliance of these regulations.

Summary:

The Polygraph Examiners Advisory Board Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of polygraph examiners. The Department of Professional and Occupational Regulation (the agency) will maintain a mailing list of persons and organizations to notify of any intended regulatory action by the board. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period," and a notice that final regulations have been adopted. The proposed PPG's outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days and will state whether or not the agency will hold a public hearing. Specific instances are given as to when the agency must hold a public hearing and when the agency must reevaluate the effectiveness and continued need of the regulations. The PPG's also establish the procedures for the formulation and adoption of regulations and the guidelines for when substantial changes are made prior to final adoption of regulations, and include the formation of an appointed advisory committee for input regarding board regulations. Finally, the PPG's specify what meetings and notices will be published in The Virginia Register.

VR 190-00-03. Polygraph Examiners 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" or "department" means the Department of Professional and Occupational Regulation.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. Notice of intent.

At least 30 days prior to the filing of the "Notice of Comment Period" and the 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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.

§ 8. 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade associations' mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6 and 8 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. Nos. R94-165 and R94-164; Filed October 27, 1993, 12:06 p.m.

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Title of Regulation: **VR 190-00-02. Employment Agencies Program Public Participation Guidelines.**

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

Public Hearing Date: N/A – Written comments may be submitted until January 15, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for the board to promulgate the Public Participation Guidelines is found in §§ 9-6.14:7.1 and 54.1-1302 of the Code of Virginia. The board is empowered to conduct studies and promulgate regulations setting standards for licensure and certification of employment agencies.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving, and considering public comment.

Substance: The proposed Public Participation Guidelines contain substantially similar language to the emergency Public Participation Guidelines promulgated in June 1993, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issues of the proposed PPG's is such that the public has the advantage of participating in the development of the regulations. With participation by the public, they will become more familiar with the contents and expectations of the regulations. The advantage to the agency is that with public knowledge of the regulations, the agency will save considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Public Participation Guidelines affect approximately 145 organizations and individuals licensed or certified by the board. The regulations also apply to the general public, associations and other related groups to ensure their participation in the regulatory process.

Since the proposed public participation guidelines are substantially similar to the current emergency public participation guidelines, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Employment Agencies Program Public Participation Guidelines (PPG's) provide an opportunity for public participation in the promulgation process of regulations. The department (the agency) will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Action," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPG's will outline the necessary procedures for being placed on or deleted from the mailing list. The "Notice of Intended Regulatory Action" will provide for a comment period of at least 30 days, and will state whether or not a public hearing will be held. The PPG's require the agency to provide a comment period and include instructions as to when the agency must reevaluate the regulations. The PPG's establish the procedures for formulation and adoption of regulations and the procedures to follow when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are outlined in the regulations. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 190-00-02. Employment Agencies Program 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" or "department" means the Department of Professional and Occupational Regulation.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. Notice of intent.

At least 30 days prior to the filing of the "Notice of Comment Period" and the 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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.

§ 8. Advisory committees.

The department 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade association mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6, and 8 shall apply to al

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. R94-169; Filed October 27, 1993, 11:58 a.m.

REAL ESTATE BOARD

Title of Regulation: **VR 585-01-0. Public Participation Guidelines (REPEALING).**

Title of Regulation: **VR 585-01-0:1. Public Participation Guidelines.**

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

Public Hearing Date: N/A – Written comments may be submitted through January 14, 1994.
(See Calendar of Events section
for additional information)

Basis: The statutory authority of the board to promulgate the Real Estate Board Public Participation Guidelines (PPGs) is found in §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia. The board is empowered to promulgate regulations setting standards for initial licensure, continuing licensure and conduct standards for real estate licensees.

Purpose: The purpose of this regulatory action is to implement the requirements of the Administrative Process Act (APA) and the revisions to the APA made by the 1993 Virginia General Assembly by establishing procedures to be followed by the board in soliciting, receiving and considering public comment.

Substance: The proposed Real Estate Board PPGs contain substantially similar language to the emergency public participation guidelines, which are currently in effect. Therefore, there is no change from the current status of the law.

Issues: The issue of the proposed PPGs is that the public has the advantage of participating in the development of the Real Estate Board regulations. Through its participation, the public will become more familiar with the contents and expectations of the licensing regulations. The advantage to the agency is that public knowledge of the regulations should save the agency considerable staff time in explaining, implementing and enforcing the regulations.

Estimated Impact: The proposed Real Estate Board PPGs affect approximately 60,000 real estate licensees.

Since the proposed PPGs are substantially similar to the current emergency PPGs, there will be no additional cost to the agency in the implementation and compliance of this regulation.

Summary:

The Real Estate Board Public Participation Guidelines (PPGs) mandate public participation in the promulgation process of the Real Estate Board regulations. The Real Estate Board will maintain a mailing list to notify persons and organizations of intended regulatory action. The agency will mail such documents as "Notice of Intended Regulatory Actions," "Notice of Comment Period" and a notice that final regulations have been adopted. The PPGs will provide for a comment period of at least 30 days and will state whether or not a public hearing will be held. The PPGs give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPGs establish the procedures for formulation and adoption of regulations and the procedures to be taken when substantial changes have been made prior to final adoption of the regulations. The use of and input from advisory committees to formulate regulations are established in the PPGs. The PPGs specify what meetings and notices will be published in The Virginia Register.

VR 585-01-0:1. 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" or "board" means the Real Estate Board.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 2. Mailing list.

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.

§ 3. Placement on the mailing 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 § 2. 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.

§ 4. 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.

§ 5. Notice of intent.

At least 30 days prior to the filing of the "Notice of Comment Period" and the 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.

§ 6. 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 of Regulations for inclusion in The Virginia Register. Such proceedings may be held separately or in conjunction with other informational proceedings.

§ 7. 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 of Regulations 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 within 30 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 30 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.

§ 8. 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:

1. Directories of organizations related to the profession,

2. Industry, professional and trade associations' mailing lists, and

3. Lists of persons who have previously participated in public proceedings concerning this or a related issue.

§ 9. Applicability.

Sections 2 through 4, 6, and 8 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. Nos. R94-168 and R94-180; Filed October 27, 1993, noon.

DEPARTMENT OF TAXATION

Title of Regulation: **VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Furthermore, it reviews the regulations to determine whether certain regulations dealing with similar matters should be consolidated and whether those dealing with numerous matters should be divided into separate regulations. It was determined that a separate regulation is appropriate in this instance.

Purpose: This regulation clarifies the application of the retail sales and use tax to purchases and sales by adult care residences and adult day care centers.

Substance: This regulation clarifies that purchases by nonprofit adult care residences and nonprofit adult day care centers licensed by the state and as defined in the regulation are exempt from the tax. Purchases of tangible personal property by all other adult care residences and adult day care centers are taxable. Sales by such entities are taxable.

The subject matter of this regulation was previously discussed in part in VR 630-10-47 relating to hospitals and nursing homes.

Issues: Regulatory provisions should be reviewed periodically to ensure they reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to purchases and sales by adult care residences and adult day care centers.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in adopting the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include nonprofit adult care residences and nonprofit adult day care facilities licensed by the Department of Social Services. Since this regulation is intended to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation.

Summary:

This regulation clarifies the application of the retail sales and use tax to purchases and sales by adult care residences and adult day care centers. The tax status of purchases by such entities was previously set forth in VR 630-10-47 relating to hospitals and nursing homes.

VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.

§ 1. Definitions.

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

"Adult care residence" means an adult care residence often referred to as a "home for adults" and defined in § 63.1-172 of the Code of Virginia as any public or private place, establishment, or institution operated or maintained for the maintenance or care of four or more adults who are aged, infirm, or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, but including any portion of such facility not so licensed, and (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage, and (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an education program for the handicapped pursuant to § 22.1-214 of the Code of Virginia, when such facility is licensed by the Virginia Department of Social Services as a child-caring institution under Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia, but including any portion of the facility not so licensed. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults.

"Adult day care center" means an adult day care center as defined in § 63.1-194.1 of the Code of Virginia as a facility which provides supplementary care and protection during part of the day only to four or more

aged, infirm, or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage.

§ 2. Generally.

Purchases of tangible personal property by nonprofit adult care residences and nonprofit adult day care centers licensed by the Department of Social Services are exempt from the tax. Purchases of tangible personal property by all other adult care residences and adult day care centers, whether conducted for profit or not, are taxable unless otherwise exempt. If a vendor fails to collect the tax from a nonexempt entity, the entity must remit the tax to the department as provided in VR 630-10-109.

Any adult care residence or adult day care center, whether for profit or nonprofit, which engages in selling tangible personal property shall register as a dealer and collect and remit the tax to the department. For example, sales of meals to nonresidents are taxable. Purchases of tangible personal property for subsequent resale may be made exempt from the tax under a certificate of exemption, Form ST-10.

VA.R. Doc. No. R94-125; Filed October 26, 1993, 10:05 a.m.

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Title of Regulation: **VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, it is being revised.

Purpose: This regulation clarifies the retail sales and use tax application to agricultural and seafood processors in order to provide guidance to the private sector as well as department personnel.

Substance: The regulation clarifies that the retail sales and use tax is not applicable to a processor's purchase of agricultural or seafood commodities.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to agricultural and seafood commodities.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include persons engaged in the agricultural processing and seafood processing business. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to agricultural and seafood processors and to be crafted into the standard regulation form required by the Virginia Register, Form, Style and Procedure Manual.

VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.

~~The tax does not apply to any agricultural commodity or seafood sold to any person for the purpose of preparing, finishing or manufacturing an agricultural or seafood commodity for sale. Agricultural or seafood commodities sold at retail are subject to the tax. The term "agricultural commodity" means horticultural, poultry and farm products, and livestock and livestock products. For manufacturing, processing etc., see § 630-10-63. Section revised 1/79.~~

§ 1. Definitions.

The following terms, when used in this regulation, shall have the following meaning, unless the context clearly indicates otherwise:

"Agricultural commodity" means crops, horticultural

products, poultry, livestock, livestock products, worms, and other farm products produced from an agricultural production process as determined in VR 630-10-4.

"Seafood commodity" means fish and other seafood produced from an agricultural production process as determined in VR 630-10-4.

§ 2. Generally.

The sale of an agricultural commodity or seafood commodity to any person for the purpose of preparing, finishing, or manufacturing such commodity for sale is exempt from the tax. The sale at retail of the prepared, finished, or manufactured agricultural or seafood commodity is taxable.

VA.R. Doc. No. R94-124; Filed October 26, 1993, 10:07 a.m.

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Title of Regulation: **VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, it is being revised.

Purpose: This regulation clarifies the retail sales and use tax application to aircraft sales, leases, and rentals in order to provide guidance to the private sector as well as department personnel. The regulation also sets forth the tax application to repair and replacement parts, and maintenance materials.

Substance: The regulation clarifies that the retail sales and use tax is not applicable to the sales, lease, or rental of aircraft provided the transaction is subject to the aircraft sales and use tax under Chapter 15 of Title 58.1 of the Code of Virginia. Repair and replacement parts are also exempt from the retail sales and use tax if the sale, lease or rental is subject to the aircraft sales and use tax. Maintenance materials such as oil, grease, soaps, cleaners, etc. are subject to the retail sales and use tax.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to aircraft sales, leases and rentals, and the maintenance and repairs thereon.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include persons engaged in aircraft sales, leases, or rentals and persons repairing and maintaining such aircraft. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify that the retail sales and use tax is not applicable to the sale, lease, or rental of aircraft provided the aircraft is subject to the aircraft sales and use tax under Chapter 15 of Title 58.1 of the Code of Virginia. This regulation also sets forth the application of the sales and use tax to repair and replacement parts and accessories for aircraft, which is governed by the time of installation and the use of the aircraft by the owner. Maintenance materials such as oil, grease, soaps, cleaners, etc., used on aircraft are subject to the retail sales and use tax.

VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repair and Replacement Parts and Maintenance Materials.

§ 1. Definitions.

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

"Aircraft" means any contrivance used or designed for untethered navigation or flight in the air by one or more persons at an altitude greater than 24 inches above the ground. Such term shall not include parachutes.

"Aircraft sales tax" means the tax imposed under Chapter 15 (§ 58.1-1500 et seq.) of Title 58.1 of the Code of Virginia.

"Dealer" means any person owning and placing five or more aircraft for resale during a calendar year who the Tax Commissioner finds to be in the regular business of selling aircraft.

"Gross receipts" means the charges made or voluntary contributions received for the hourly rental and maintenance of an aircraft, all other charges for the use of an aircraft and, unless separately stated on the invoice, all charges for services of pilots or instructors in such aircraft. The term shall also include any amount by which the price estimated under § 58.1-1503 of the Code of Virginia exceeds the charge actually made.

"Sales price" means the total amount paid for an aircraft and all attachments thereon and accessories thereto, without any allowance or deduction for trade-ins or unpaid liens or encumbrances, but exclusive of any federal manufacturers' excise tax.

~~A.~~ *§ 2.* Generally.

The sale, lease or rental (including charters) of aircraft is not subject to the retail sales and use tax ~~when~~ *provided* such transaction is subject to the Virginia aircraft sales and use tax *as set forth under Chapter 15 (§ 58.1-1500 et seq.) of Title 58.1 of the Code of Virginia* .

~~B. Aircraft defined.~~

~~For the purpose of this regulation, the word "aircraft" shall mean any contrivance used or designed for untethered navigation of or flight in the air carrying one or more persons at an altitude greater than 24 inches above the ground and any other device described in Va. Code § 58.1-1501.~~

~~C.~~ *§ 3.* Repair and replacement parts used on aircraft sold, leased or rented.

Repair and replacement parts and accessories installed on an aircraft at the time of sale ~~that~~ , *which* are included in the sale price for *the purpose of* computing the aircraft sales and use tax , are exempt from the retail sales and use tax. Such parts and accessories are also exempt from the retail sales and use tax when installed on leased or rented aircraft when such aircraft are subject to the aircraft sales and use tax based upon gross receipts. These items may be purchased by a dealer ~~, as defined in Va. Code § 58.1-1501~~ exclusive of the retail sales and use tax when a resale exemption certificate, Form ST-10, is presented *to the retailer* at the time of sale.

The retail sales and use tax is applicable to ~~such items though~~ *repair and replacement parts and accessories* when an aircraft dealer elects to remit the aircraft sales and use tax upon his purchase of an aircraft rather than upon the gross receipts derived from the lease, charter , or other use of the aircraft. Likewise, purchases of such items by individual aircraft owners or nondealers are subject to the retail sales and use tax.

~~D.~~ *§ 4.* Maintenance materials.

Maintenance materials such as oil, grease, soaps, cleaners, etc. used on aircraft are subject to the retail sales and use tax. See the Virginia Aircraft Sales and Use Tax Regulations for information relating to the aircraft sales and use tax generally. ~~Section revised 7/69; 1/79; 1/85.~~

VA.R. Doc. No. R94-123; Filed October 26, 1993, 10:09 a.m.

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Title of Regulation: **VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice, and a legislative change. Since this regulation has not been revised since January 1985, it is being revised.

Purpose: This regulation clarifies the retail sales and use tax application to commercial watermen in order to provide guidance to the private sector as well as department personnel.

Substance: The regulation clarifies that the retail sales and use tax is not applicable to a commercial waterman's purchase of equipment and supplies for use in his commercial fishing activity and to include the legislative change which included boat motors in those items exempt from the tax.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to commercial watermen.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt

to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include persons engaged in the commercial fishing business. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to a commercial waterman's purchase of equipment and supplies for use in his commercial fishing activity, to incorporate a legislative change, and to be crafted into the standard regulation form required by the Virginia Register, Form, Style, and Procedure Manual.

VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.

§ 1. Definitions.

The following terms, when used in this regulation, shall have the following meanings, unless the context clearly indicates otherwise:

"Boat" means any vessel used for marine transportation other than a watercraft as defined in § 58.1-1401 of the Code of Virginia.

"Commercial fishing activity" means the business of extracting fish, bivalves, or crustaceans from waters for sales or resale.

"Commercial waterman" or "commercial watermen" means a person or persons who regularly engage in a commercial fishing activity.

"Directly used" means those items that are both indispensable to a commercial fishing activity and which are used immediately in the commercial fishing activity.

~~A.~~ *§ 2.* Generally.

~~The tax does not apply to~~ *A commercial waterman's purchase of a boat, motor,* machinery, tools, repair parts, fuel, or supplies ~~purchased by commercial watermen~~ , *including, but not limited to, paint or other materials used to recondition a boat,* for use in ~~extracting fish, bivalves or crustaceans from waters~~ *a commercial fishing activity is exempt from the tax .* ~~For purposes of this exemption, the terms "machinery, tools, repair parts, fuel or supplies" does not include the boat itself or supplies used to paint or condition the boat.~~

~~B. Following is a listing of items which may be purchased exempt from the tax by commercial watermen as well as those items which are subject to the tax. This listing is intended to be exemplary and is not all inclusive.~~

~~1. The following items are exempt when purchased and used by commercial watermen in extracting seafood from waters for commercial purposes:~~

§ 3. Typical exempt items; direct use; taxable use; dual use of equipment.

A. A commercial waterman's purchase of the following items will not be subject to the tax if directly used in the commercial fishing operation:

1. Anchors ;

2. Bait ;

3. Bilge pump ;

4. Boat and boat motors;

5. Boat rudder and stock ;

6. Boat steering gear ;

7. Boat hook ;

8. Boom and gaff on commercial fishing vessel ;

9. Compass ;

10. Crab-pot rope and wire ;

11. Depth finder ;

12. Dredge and equipment including all deck and components and repairs thereof ;

13. Drive shaft and propeller ;

14. Engines and other equipment;

15. Floats for net or crab-pot ;

16. Foul-weather clothing worn while extracting seafood from waters ;

17. Fuel ;

18. Gas tanks ;

19. Gill net and all types of nets for extracting seafood ;

20. Hand tools used in extracting seafood ;

21. Ice for preserving seafood or bait ;

22. Inboard and outboard motors ;

23. Nails, screws and bolts used on any seafood extracting equipment except the boat itself ;

24. Oyster tubs and baskets ;

25. Nets and twine;

26. Paint for ~~nets, twine, engines, or any other equipment used in extracting seafood~~ *boats;*

27. Poles and stakes used in setting nets and marking ground for seafood ;

28. Power block and accessories ;

29. Pulley for deck rig or net rigs ;

30. Repair parts for exempt equipment ;

31. Rope or twine, including wire cable, or chain for boat, net or dredge rig used ~~by commercial watermen who~~ *to* extract seafood ;

32. Rudder and shaft zincs ;

33. Running lights and deck lights ;

34. Shovels for handling seafood in the catching process ;

35. Sonar equipment to locate fish, bivalves, or crustaceans;

36. Ship-to-shore radios, radar equipment, and other related accessories which are permanently affixed to a boat and become an integral part thereof;

37. Tools such as knives, shovels, etc., used directly in a commercial fishing activity;

38. Trawl doors ; *and*

39. Any other tangible personal property purchased for exclusive use in extracting seafood from waters for commercial purposes.

~~Any items listed above which are attached to and a part of the boat at the time of sale, including the motor, are a part of the sales price of the boat and are subject to the watercraft or retail sales and use tax, whichever is applicable, at the time the boat is purchased.~~

B. A commercial waterman must directly use a boat, motor, machinery, tools, repair parts, fuel, or supplies in a commercial fishing activity, otherwise the purchase is taxable.

Example. A commercial waterman purchases a boat which he will use to transport both himself and his crew to his fishing vessel which is anchored in the harbor. The commercial waterman uses the boat for transportation purposes only and not for commercial fishing. Since the commercial waterman does not use the boat directly in his commercial fishing operation, the boat will be taxable.

C. A commercial waterman's purchase of an item, which is typically exempt from the tax since it is usually used directly in a commercial fishing operation, for use in a nonexempt manner, is taxable.

Example. A commercial waterman purchases paint to repaint a boat he uses for recreational purposes. Since the commercial waterman uses the boat in a taxable manner, the purchase of the paint is taxable. Had the commercial waterman purchased the paint to repaint the boat he uses in his commercial fishing operation, the purchase would have been exempt from the tax.

D. A commercial waterman's use of supplies or equipment in both an exempt activity and a taxable activity will result in such items being taxable unless he can accurately determine the percentage of use of such items in the commercial fishing activity as compared to his use of the items in a taxable activity. In such case, the commercial waterman can prorate the tax due on the supplies or equipment based upon his percentage of use of such items in the taxable activity.

~~2. The following items are subject to the tax even when purchased by commercial watermen:~~

§ 4. Typical nonexempt items.

A commercial waterman's purchase of the following items is taxable since they are not directly used in commercial fishing activities:

1. Boat marking letters ;

2. Cooking utensils ;

3. Deck brooms ;

4. Fuel for cooking or space heating aboard vessels ;

5. Flashlight and batteries ;

6. Hand held radios and other communication devices not permanently affixed to a boat;

7. Life preservers ;

8. Maps ;

~~9. Tools used in making repairs to boats~~

~~Paint used directly on the boat~~

~~10. Ship-to-shore radios and accessories~~

9. Tools used ~~for repairs~~ to *repair* equipment ;

~~Vessels and boats, including repairs thereof~~

10. Any other tangible personal property purchased for family or personal use or not purchased for use in extracting seafood from waters for commercial purposes .

~~C.~~ *§ 5.* Watercraft sales and use tax. ~~Effective January 1, 1982, certain boats are subject to the 2% watercraft sales and use tax. For further information, see Virginia Watercraft Sales and Use Tax Regulations. Section added 1/79; section revised 1/85.~~

Certain vessels are subject to the watercraft sales and use tax despite the fact that they may be exempt from the retail sales and use tax pursuant to this regulation. See Chapter 14 (§ 58.1-1400 et seq.) of Title 58.1 of the Code of Virginia and the regulations thereunder.

VA.R. Doc. No. R94-122; Filed October 26, 1993, 10:11 a.m.

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Title of Regulation: **VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, it is being revised.

Purpose: This regulation clarifies the retail sales and use tax application to containers, packaging materials, and equipment in order to provide guidance to the private sector as well as department personnel.

Substance: The regulation clarifies that the retail sales and use tax is applicable to containers, packaging materials, and equipment, ownership of which remains with the seller. Containers, packaging material, and equipment, ownership of which transfers to the customer, is exempt as a purchase for resale.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to containers, packaging materials, and equipment.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include wholesalers and retailers who package products for sale, whether or not ownership of the packaging material remains with the wholesaler or retailer or passes to the customer. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify that the retail sales and use tax is applicable to containers, packaging materials, and transportation devices, ownership of which remains with the seller. Containers, packaging materials, and transportation devices the ownership of which passes to the customer may be purchased tax exempt as a purchase for resale. Equipment used in packaging which remains the property of the seller is also taxable.

VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials, and Equipment.

~~A. Packaging materials.~~ *§ 1. Definitions.*

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

"Packaging materials" means items which are used to package products for sale and which become the property of the purchaser subsequent to the sale. Examples of such items are containers, labels, sacks, cans, boxes, drums, and other similar items.

"Transportation devices" means items which are used to transport and protect products for sale and to restrain product movement in a single plane of direction. Examples of such items are pallets, dunnage, strapping and similar materials used to brace or secure cargo for transport.

§ 2. Exempt uses.

Packaging materials ~~, such as containers, labels, sacks, cans, boxes, drums, bags and other similar items~~ may be purchased tax exempt ~~by wholesalers and retailers as purchases for resale,~~ if the items are marketed with the product being sold and become the property of the purchaser. *Packaging materials which do not become the property of the purchaser, are subject to the tax.*

Packaging material may be purchased exempt by industrial manufacturers, processors or miners, regardless of whether they are returnable or nonreturnable (see VR 630-10-63).

~~Pallets, dunnage, strapping and similar materials used to brace or secure cargo for transport and restrain product movement in a single plane of direction~~ *Transportation devices* are not packaging materials and may not be purchased tax exempt unless purchased for resale. ~~Persons who provide packaging services must pay the tax at the time of purchase on pallets, dunnage, which are used in providing the service and are not resold to a customer.~~

§ 3. Taxable uses.

Packaging materials and transportation devices, the ownership of which remains with the seller and does not pass to the customer are taxable. Persons who provide packaging and transportation services must pay the tax on all material used in providing such services unless the materials are resold to a customer and no transportation services are provided therewith.

~~B.~~ *§ 4.* Equipment.

The tax applies to the purchase of equipment for use in the operation of a business even though such equipment may be used in connection with the shipment or sale of tangible personal property. Examples of property which is subject to the tax are truck bodies and trailers, tank and freight cars, containerized cargo, shopping carts and baskets, crates, dispensers, dishes, beverage glasses, and similar articles which are not resold and do not become the property of the purchaser.

~~For industrial manufacturers and processors, see § 630 10 63; for advertising materials, see § 630 10 18.1. Section revised 1/79; 1/85.~~

VA.R. Doc. No. R94-121; Filed October 26, 1993, 10:13 a.m.

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Title of Regulation: **VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985 and there was a legislative change which needed to be reflected in the regulation, it is being revised.

Purpose: This regulation clarifies the application of the retail sales and use tax to purchases and sales by dentists, dental laboratories and dental supply houses.

Substance: The revisions to this regulation generally are nonsubstantive in nature in that they include primarily cosmetic or format changes. However, the regulation does reflect a legislative change impacting dentists which exempts purchases and sales of nonprescription drugs and proprietary medicines from the tax effective July 1, 1994.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's policy with respect to purchases and sales by dentists, dental laboratories and dental supply houses.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include dentists, dental laboratories and dental supply houses. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision. Instead, it is anticipated that due to the legislative change impacting purchases of nonprescription drugs, dentists will save money.

Summary:

The revisions to this regulation generally are nonsubstantive in nature in that they include primarily cosmetic or format changes. However, the regulation does reflect a legislative change impacting dentists which exempts purchases and sales of nonprescription drugs and proprietary medicines from the tax effective July 1, 1994.

VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.

~~A.~~ *§ 1.* Dentists *; dentures, braces and similar items .*

~~1. Generally.~~

A. Dentists are deemed to be providing professional services and charges for their services are not subject to the tax. ~~Similarly,~~ *However,* dentists are ~~deemed to be~~ the *taxable users and* consumers of all tangible personal property purchased for use in their practice except *for* controlled drugs *and nonprescription drugs and proprietary medicines* which may be purchased exempt from the tax *as set forth in VR 630-10-65 . If a supplier of furnishings, equipment, tools, dental supplies, etc., fails to collect the tax from a dentist, the dentist must remit the tax to the department and file a Consumer's Use Tax Return, Form ST-7.*

~~2. Dentures, braces and similar items.~~

~~The tax applies to sales~~ *B. Sales* to a dentist by a dental laboratory or supplier of dentures, plates, braces and similar prosthetic devices, or the component parts thereof *are taxable* , unless such dentures, braces, etc. , are purchased on behalf of a specific patient. If such items are purchased in bulk *and* then dispensed to a particular patient, the original purchase will be subject to the tax even if the items withdrawn from the bulk inventory are modified for a specific patient.

~~The tax does not apply to charges~~ *Charges* by the dentist to the patient for ~~such~~ dentures, plates, braces, etc. *, are not subject to the tax.*

~~3. Equipment, furnishings, etc.~~

~~The tax applies to sales to a dentist of furnishings, equipment, tools and other dental supplies of any type.~~

~~B.~~ *§ 2.* Dental laboratories.

Dental laboratories engaged in the production of dentures and ~~the~~ prosthetic items are deemed to be industrial manufacturers and qualify for the exemption ~~set out~~ *set forth in subdivision 2 of § 58.1-609.3 of the Code of Virginia and further explained* in *§ VR* 630-10-63. Dental laboratories making sales of tangible personal property to dentists must collect and ~~pay~~ *remit* the tax *to the department* on all charges for such property without deduction for labor and other expenses *, except as provided in § 1 of this regulation .*

Dentists who fabricate dentures and prosthetic devices for their own patients are not industrial manufacturers and are required to pay the tax on all equipment and supplies used in fabricating the dentures and other prosthetic devices.

~~C.~~ *§ 3.* Dental supply houses.

Dental supply houses are those businesses primarily engaged in selling fixtures, equipment, instruments, materials and supplies to both dentists and dental laboratories. Dental supply houses must collect and ~~pay~~ *remit* the tax *to the department* on retail sales of tangible personal property to dentists, dental laboratories, and other users unless a properly executed Certificate of Exemption is furnished by the purchaser.

Purchases of tangible personal property for subsequent resale by a dental supply house may be made exempt from the tax under a certificate of exemption, Form ST-10. ~~Section revised 7/69; 1/70: 1/85.~~

VA.R. Doc. No. R94-120; Filed October 26, 1993, 10:16 a.m.

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Title of Regulation: **VR 630-10-39. Retail Sales and Use Tax: Federal Areas (REPEALING).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically evaluates regulations to determine whether regulations dealing with similar issues should be consolidated to more effectively and concisely reflect department policy. To this end, this regulation is being combined with the regulation dealing with

governments generally.

Purpose: This regulation is being repealed in order to consolidate regulations dealing with similar matters.

Substance: The provisions of this regulation are being incorporated into VR 630-10-45 which deals with governments generally and thus this regulation is being repealed.

Issues: Regulatory provisions should be revised periodically to determine if similar issues addressed in separate regulations could more effectively and concisely be covered in one regulation.

Estimated Impact:

A. Projected Cost to Agency: The Department of Taxation has incurred minimal administrative costs in repealing this regulation. By incorporating the provisions of this regulation into another regulation, the department has attempted to minimize printing and mailing costs.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: The repeal of this regulation will have no impact on persons engaged in retail sales in federal areas, as the provisions of this regulation are being incorporated into another regulation.

D. Projected Cost to Regulated Entities: Regulated entities will incur no additional costs due to the repeal of this regulation.

Summary:

The provisions of this regulation are being incorporated into VR 630-10-45 which deals with governments generally and thus this regulation is being repealed.

VA.R. Doc. No. R94-119; Filed October 26, 1993, 10:17 a.m.

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Title of Regulation: **VR 630-10-39.2. Retail Sales and Use Tax: Flags (REPEALING).**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically evaluates regulations to determine whether those regulations dealing with similar issues should be consolidated to more effectively and concisely reflect department policy. To this end, this regulation is being combined with the regulation dealing with governments generally.

Purpose: This regulation is being repealed in order to consolidate regulations dealing with similar matters.

Substance: The provisions of this regulation are being incorporated into VR 630-10-45 which deals with governments generally and thus this regulation is being repealed.

Issues: Regulatory provisions should be revised periodically to determine if similar issues addressed in separate regulations could more effectively and concisely be covered in one regulation.

Estimated Impact:

A. Projected Cost to Agency: The Department of Taxation has incurred minimal administrative costs in repealing this regulation. By incorporating the provisions of this regulation into another regulation, the department has attempted to minimize printing and mailing costs.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: The repeal of this regulation will have no impact on governmental entities as the provisions of this regulation are being incorporated into another regulation.

D. Projected Cost to Regulated Entities: Regulated entities will incur no additional costs due to the repeal of this regulation.

Summary:

The provisions of this regulation are being incorporated into VR 630-10-45 which deals with governments generally and thus this regulation is being repealed.

VA.R. Doc. No. R94-118; Filed October 26, 1993, 10:19 a.m.

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Title of Regulation: **VR 630-10-45. Retail Sales and Use Tax: Governments.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section

for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985 and was not reflective of current policy, it is being revised.

Purpose: This regulation clarifies the tax status of sales and purchases by the Commonwealth, its political subdivisions and the federal government in order to provide guidance to industry and department personnel.

Substance: This regulation has been revised to clarify existing department policy with respect to purchases and sales by the Commonwealth and its political subdivisions, and the federal government. Particularly, it clarifies that while the federal government is not required to collect the sales tax on sales of tangible personal property, persons purchasing tangible personal property from it are required to remit use tax to the department on such purchases.

The regulation also clarifies the department's position with respect to purchases of meals and lodging by governmental employees and the use of government credit cards – meals and lodging purchased by the state, regardless of whether the purchases are made pursuant to required official purchase orders, are taxable. However, meals and lodging purchased by the federal government or its employees traveling on government business are exempt from the tax only when payment for such meals, lodging or other accommodations are made directly by the federal government pursuant to an official purchase order and paid for out of federal funds.

The provisions of two related regulations dealing with sales of flags by governments and sales generally in federal areas have been incorporated into this regulation.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to purchases and sales by federal, state, and local governments.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include federal, state and local governments, and their employees. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify existing department policy with respect to purchases and sales by the Commonwealth and its political subdivisions, and the federal government. Particularly, it clarifies that while the federal government is not required to collect the sales tax on sales of tangible personal property, those purchasing personal property from it are required to remit use tax to the department on such purchases. The regulation also clarifies the department's position with respect to purchases of meals and lodging by governmental employees and the use of government credit cards – meals and lodging purchased by the state, regardless of whether the purchases are made pursuant to required official purchase orders, are taxable. However, meals and lodging purchased by the federal government or its employees traveling on government business are exempt from the tax only when payment for such meals, lodging or other accommodations is made directly by the federal government pursuant to an official purchase order and paid for out of federal funds.

The provisions of two related regulations dealing with sales of flags by governments and sales generally in federal areas have been incorporated into this regulation.

VR 630-10-45. Retail Sales and Use Tax: Governments.

PART I.
SALES TO GOVERNMENTS.

~~A. Federal government~~ *§ 1.1. Generally.*

~~The tax does not apply to sales~~ *Sales* to the United States, *or to the Commonwealth of Virginia or its political subdivisions, are exempt from the tax* if the purchases are pursuant to required official purchase orders to be paid out of public funds. ~~The tax applies when such sales are~~ *Sales* made without the required purchase orders and are not paid for out of public funds *are taxable* . Sales to governmental employees for their own consumption or use *in carrying out official government business* are taxable.

~~For example, if a federal employee traveling on government business and~~

§ 1.2. Meals, lodging and other accommodations.

A. Charges for meals, catered events, lodging, and other accommodations, such as meeting or conference rooms, are subject to the tax when paid for by the state or local government or public institutions of learning, or employees of such, regardless of whether the purchases are made pursuant to required official purchase orders. Room setup charges in connection with the rental of rooms or conference rooms are also taxable. Setup charges not in connection with room rentals are not subject to the tax.

B. Purchases of meals, lodging, and other accommodations, by the federal government or its employees traveling on government business are exempt from the tax provided payment for *the* meals ~~or~~ , lodging *, or other accommodations* is made directly by the federal government pursuant to ~~a~~ *an official* purchase order (e.g., by direct billing to government or use of government credit card) ; ~~no tax will apply~~ . *Only credit card purchases for which the credit of the federal government is bound and billings are sent directly to and paid by the government, are exempt from the tax. For example, I.M.P.A.C. cards which have been identified as a United States government credit card and which can be used only for making purchases for official government purposes may be used to make exempt purchases, provided the credit card bill will be paid directly by the federal government.*

~~However, if the~~ *If an* employee pays for ~~the~~ meals and lodgings with personal funds *, a personal credit card or a credit card provided by the government, the bill for which is sent directly to the employee,* and will be reimbursed by the government or utilizes a travel advance, no exemption is available even though the employee may be traveling pursuant to official government orders *or the credit card used has the governmental agency's name embossed thereon .*

~~The tax does not apply to sales to or by officers' clubs, noncommissioned officers' clubs, officers' messes, noncommissioned officers' messes, and post exchanges organized, operated and controlled under Department of Defense regulations. The exemption does not cover individuals or organizations operating on a military reservation in their own right. No person is relieved from liability for payment of, collection of, or accounting for the tax on the ground that the sale or use occurred in whole or in part within a federal area. (See [5] 630-10-39)~~

~~B.~~ *§ 1.3.* Federal credit ~~union~~ *unions* .

~~The tax does not apply to sales~~ *Sales* to federally chartered credit unions *are exempt from the tax* (12 USCA 1768).

~~C.~~ *§ 1.4.* Privately owned financial and other ~~privately owned~~ *similar* corporations chartered by the United States.

Privately owned financial and similar corporations chartered by the United States , *such as commercial banks and federal savings banks,* are not instrumentalities of the ~~U.S.~~ *United States* and do not qualify for an exemption. Thus, sales and leases to these corporations are subject to the tax.

~~D. State government and political subdivisions of Virginia.~~

~~1. Purchases.~~

~~The tax does not apply to sales to the Commonwealth of Virginia or to its political subdivisions, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds.~~

~~No exemption is provided for state or local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not.~~

PART II.
SALES BY GOVERNMENTS.

~~2.~~ *§ 2.1. Generally.*

Except as provided in this section, sales by the state, its agencies and political subdivisions generally are taxable.

Since the obligation to collect the tax cannot be imposed upon the federal government, purchases of tangible personal property from the federal government or its agencies, are subject to the use tax, except as provided in this section and § 3.1 or unless the items are otherwise exempt. Purchases from the state and local governments are subject to the use tax where the state agency or locality does not collect the sales tax from the purchaser. See VR 630-10-107 for a further explanation of the use tax.

Any state agency or locality making sales of tangible personal property not otherwise exempt shall register as a dealer with the department and collect and remit the sales tax on its sales. Any agency or locality collecting the tax shall be entitled to the dealer's discount. See VR 630-10-31.

§ 2.2. Exempt sales.

~~The tax does not apply to sales of alcoholic beverages by the Virginia Alcoholic Beverage Control, Commission, nor to sales of~~ *A. Sales by the state, its agencies, or political subdivisions of the following are exempt from the*

tax:

1. School lunches served to pupils and employees of schools and subsidized by any level of government; ~~nor to~~

2. ~~sales of~~ School textbooks by a local school board or authorized agency ; ~~nor to sales of school textbooks~~ , *or* by state educational institutions at any level for use of students attending such educational institutions ; ~~nor to sales of the official flag of the United States, Commonwealth of Virginia or any political subdivision of Virginia by a governmental agency~~ .

3. ~~The provision of~~ Copies of official documents or records ~~by the State, its agencies, and political subdivisions does not constitute a retail sale subject to the sales tax. Consequently, charges for these copies will not be subject to the sales tax. Additionally, State and local government units are not liable for use tax on materials purchased for use in making such copies. Examples of document or record copies which are not subject to the tax when provided by a government agency are~~ *such as* :

~~(1) copies of~~ *a.* A Certificate in Good Standing;

~~(2) copies of~~ *b.* Corporate charters;

~~(3) copies of~~ *c.* Birth and death certificates;

~~(4) copies of~~ *d.* Executor qualification certificates;

~~(5) copies of~~ *e.* Jury lists, proceedings and debates, calendars of events, transcripts, and wills;

~~(6) copies of~~ *f.* Driving records and accident reports; and

~~(7) copies of~~ *g.* Photos, summonses, and offense reports.

The above list is intended to be exemplary and not all inclusive.

B. Materials provided by the State Board of Elections pursuant to subdivisions (8), (9), and (10) of § 24.1-23 of the Code of Virginia are exempt from the tax.

C. Official flags of the United States, the state or any county, city or town in Virginia sold by a governmental agency are exempt from the tax.

§ 2.3. Taxable sales.

~~The provision, for a charge, of books,~~ *Sales of the following items of tangible personal property by the state, its agencies and political subdivisions, and the United States, are taxable:*

1. Books, publications, and similar documents ; ~~does constitute a retail sale of tangible personal property and is subject to the tax. Any agency making such sales must register as a dealer with this department and collect the 4% sales tax on the sales. Examples of documents or publications which are subject to the sales tax are~~ *including, but not limited to* :

~~(1)~~ *a.* Copies or excerpts from any portion of the Code of Virginia;

~~(2)~~ *b.* Copies of building codes or similar rules;

~~(3)~~ *c.* Copies of books, monographs, or similar publications; and

~~(4)~~ *d.* Copies of regulations.

~~All other sales by the state and its political subdivisions are taxable unless otherwise exempt and agencies and political subdivisions making such sales are required to register for collection of the tax.~~

2. Sales of surplus furniture, office equipment, and other items.

3. Sales by sheriffs and other law-enforcement officials of confiscated and other items.

4. Bankruptcy liquidation sales which do not constitute exempt occasional sales as explained in VR 630-10-75.

PART III.
SALES WITHIN FEDERAL AREAS.

§ 3.1. Officers' clubs and similar entities.

Sales to or by officers' clubs, noncommissioned officers' clubs, officers' messes, noncommissioned officers' messes, and post exchanges organized, operated and controlled under Department of Defense regulations are not subject to the tax. The use tax does not apply to persons who make purchases for their personal use from such entities.

§ 3.2. Private concessionaires.

All retail sales made by private concessionaires within a federal area are subject to the tax to the same extent it applies to retail sales elsewhere in the state.

PART IV.
GOVERNMENT CONTRACTORS.

~~E.~~ *§ 4.1.* Government contractors.

~~Persons who contract with the federal government, the State or its political subdivisions to perform a service and in conjunction therewith furnish some tangible personal property are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This~~

~~is true~~ *The appropriate tax treatment of purchases of tangible personal property by persons who contract with the federal government, the state or its political subdivisions, is based upon whether the contract is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., facilities management or real property construction). If a contract is for the sale of tangible personal property, a contractor may purchase such tangible personal property exempt from the tax using a resale exemption certificate, Form ST-10. The tangible personal property may be resold to the government exempt of the tax.*

However, if a contract is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government ~~and/~~ or the contractor may be fully and directly reimbursed by the government *, or both* . ~~The same principle applies to persons who enter into contracts with a governmental entity to perform real property construction or repair.~~

See VR 630-10-27 for further explanation of the tax treatment of government contractors.

PART V.
DIPLOMATIC EXEMPTION.

~~F.~~ *§ 5.1.* Diplomatic exemption.

Pursuant to the provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, no sales or use tax is applicable to sales to or purchases by certain foreign diplomats *or missions* . ~~Persons who are entitled to this exemption are issued numbered diplomatic exemption cards by the U.S. State Department bearing the name and photograph of the person to whom the card is issued.~~ *Exemption cards are issued by the United States Department of State and bear a photograph and name of the diplomat eligible for exemption in the case of individual diplomat cards, and, in the case of mission cards, the person entitled to make official purchases for the mission. The extent to which an individual or mission is exempt from the tax is illustrated on the face of the card.* In order to qualify for exemption, the purchase must be made by the person to whom the card is issued. No exemption certificate is required; however, the record of the sale must indicate the exemption card number of the purchaser.

~~For construction contractors, see § 630-10-27; for sales of flags, see § 630-10-39.2. Section revised 11/79; 8/82; 11/85.~~

VA.R. Doc. No. R94-117; Filed October 26, 1993, 10:20 a.m.

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Title of Regulation: **VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, it is being revised.

Purpose: This regulation clarifies the retail sales and use tax application to harvesters of forest products in order to provide guidance to the private sector as well as department personnel.

Substance: The regulation clarifies that the retail sales and use tax is not applicable to a harvester of forest products purchase of equipment and supplies for use in his harvesting activity.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to harvesters of forest products.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include persons engaged in the harvesting of forest products. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

This regulation has been revised to clarify the applicability of the sales and use tax to a harvester of forest products purchase of equipment and supplies for use in his harvesting activity and to be crafted into the standard regulation form required by the Virginia Register, Form, Style and Procedure Manual.

VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.

PART I.
DEFINITIONS.

§ 1. Definitions.

The following terms, when used in this regulation, shall have the following meanings, unless the context clearly indicates otherwise:

"Direct use" or "directly used" means those items that are both indispensable to the harvesting of forest products and which are used immediately in the harvesting of forest products.

"Harvester" means a person who engages in the business of harvesting forest products.

"Harvesting of forest products" means the business of severing products from forests for sale or for use as a component part of a product to be sold.

PART II.
~~A.~~ GENERALLY.

§ 2.1. Exempt items.

~~The tax does not apply to~~ *A harvester's purchase of* machinery and tools and their repair parts, fuel, power, energy, or supplies used directly in the harvesting of forest products for sale or for use as a component part of a product to be sold *is exempt from the tax* . ~~As used in this regulation, the term "used directly" means those activities which are an integral part of the actual harvesting of the forest product including the severing of the product.~~

§ 2.2. Direct use.

A harvester's direct use of machinery and tools, fuel, power, energy, or supplies in the harvesting of the forest product is exempt from the tax. A harvester's use of machinery and tools, fuel, power, energy, or supplies indirectly in the harvesting of forest products or in any other activity is subject to the tax.

Repair or replacement parts used to repair, restore, or refurbish machinery and tools which are directly used in the harvesting of forest products are also exempt from the tax.

§ 2.3. Clearing activities.

Machinery and tools, etc. , used in the clearing of land or construction of roads to open up a logging site, the clearing of trash from the harvesting site, or the transportation of the severed product from the harvesting site are not ~~"used directly"~~ *exempt from the tax since such items are not used directly* in harvesting forest products.

§ 2.4. Typical exempt items.

~~B. Following is a listing of items which may be purchased exempt from the tax by harvesters of forest products and those items which are subject to the tax. This listing is intended to be exemplary and is not all inclusive. The following items may be purchased exempt from the tax by harvesters of forest products~~ *A harvester may purchase the following items exempt of the tax if he uses such items directly in his harvesting activities :*

1. Axe *;*

2. Bulldozer (Crawler tractor with a rear mounted winch with cables)-if used to pull logs out of the woods *;*

3. Cables - if used to pull logs out of the woods *;*

4. Chain saw *;*

5. Fork lift or lift truck used to move logs at harvesting site *;*

6. Hydraulic slasher *;*

7. Log cart *;*

8. Oil - if used in tractor or other log handling equipment *;*

9. Repair parts for machinery and tools used directly in the harvesting of forest products;

10. Saw blades *;*

11. Saws *;*

12. Shearers *;*

13. Skidders *;*

14. Tires - if used on bulldozer or tractor to pull logs out of the woods *;*

15. Tractor *; and*

16. Wedges .

§ 2.5. Typical taxable items.

The following items are subject to the tax even when used by a harvester of forest products:

1. Bulldozer (Crawler tractor with a front mounted blade) when used to open roads into woods for trucks or to clear mill site of trash *;*

2. Cables - ~~Cables~~ used to secure logs to a truck for transportation ~~would be taxable~~ *;*

3. Fuel tanks *;*

4. Grading machine *;*

5. Gravel, culverts and similar items used in opening and constructing roads *;*

6. Oil - if used in trucks that transport the logs from forest to mill or in equipment used to open roads or remove trash *;*

7. Repair parts for licensed and unlicensed trucks *;*

8. Repair tools;

9. Tires - if used on vehicles for transporting lumber to mill site *;*

10. Trucks (other than licensed vehicles) *; and*

11. ~~Welder~~ *Welders, and related gases.*

§ 2.6. Dual use of equipment.

~~C. The exemption for items used in both a taxable and an exempt manner shall be prorated based upon the percentage of time used in an exempt manner. Section added 1/79; section revised 1/85.~~ *A harvester's use of supplies or equipment in both an exempt activity and a taxable activity will result in such items being subject to the tax unless he can accurately determine the percentage of use of such items or equipment in the harvesting of forest products as compared to his use of the supplies or equipment in a taxable activity. In such case the harvester can prorate the tax due on the supplies or equipment based upon his percentage of use of such items in a taxable activity.*

VA.R. Doc. No. R94-116; Filed October 26, 1993, 10:23 a.m.

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Title of Regulation: **VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since March 1983, and due to some changes in the health care industry, clarification of the department's policy is necessary.

Purpose: This regulation clarifies the application of the retail sales and use tax to purchases and sales hospitals, nursing homes and other medical-related facilities.

Substance: The revisions to this regulation merely clarify the department's policy with respect to purchases and sales by hospitals and nursing homes, and purchases by various types of clinics and nonprofit hospital cooperatives and corporations. Generally, purchases by nonprofit hospitals and nonprofit licensed nursing homes and certain other nonprofit medical-related facilities are exempt from the tax. However, purchases by profit hospitals and licensed nursing homes are taxable. Sales by all such entities are taxable.

The regulation clarifies that sales to nonprofit hospital cooperatives and nonprofit hospital corporations are exempt only when such entities are organized and operated for the sole purpose of providing services exclusively to nonprofit hospitals. Sales to such entities which provide services of any kind or to any extent to other than a nonprofit hospital are taxable. The provisions relating to homes for adults were moved to a separate regulation.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's policy with respect to purchases and sales by hospitals, nursing homes and other medical-related facilities.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include hospitals, nursing homes, nonprofit hospital cooperatives and corporations, and certain clinics. Since the purpose of

this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The revisions to this regulation merely clarify the department's policy with respect to purchases and sales by hospitals and nursing homes, and purchases by various types of clinics and nonprofit hospital cooperatives and corporations. Generally, purchases by nonprofit hospitals and nonprofit licensed nursing homes and certain other medical-related facilities are exempt from the tax. However, purchases by profit hospitals and licensed nursing homes are taxable. Sales by such entities are taxable. The provisions relating to homes for adults were moved to a separate regulation.

VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.

~~A.~~ *§ 1. Definitions.*

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

"Hospital" means any facility licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia in which the primary function is the provision of diagnosis, of treatment, and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums and general, acute, rehabilitation, chronic disease, short-term, long-term, outpatient surgical, and inpatient or outpatient maternity hospitals.

"Medically underserved population" means a medically underserved area defined in 42 USC 254 c(b)(3) as the population of an urban or rural area designated by the U.S. Secretary of Health and Human Services as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. In determining whether an area has a medically underserved population, the following criteria shall be considered: (i) infant mortality rates, (ii) the ability of the population group to pay for health services and their accessibility to such services, and (iii) the availability of health professionals to the population.

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

§ 2. Hospitals and nursing homes ~~conducted for profit~~ *; purchases; sales .*

A. A hospital or nursing home ~~is~~ primarily ~~engaged~~ *engages* in the business of selling *nontaxable* services and *, except as provided in this section,* is ~~a~~ *the taxable* user ~~or~~ *and* consumer of all tangible personal property purchased for use or consumption in connection with its operations. Each is required to pay the tax to its vendor at the time of purchase. *If a vendor fails to collect the tax, the hospital or nursing home shall remit use tax to the department as provided in VR 630-10-109.*

~~B. Hospitals and licensed nursing homes conducted not for profit. The tax does not apply to sales~~ *Purchases* of tangible personal property ~~to such~~ *by nonprofit* hospitals or *nonprofit* licensed nursing homes, for *their own* use or consumption ~~by them, and~~ *in connection with their operations, however, are not subject to the tax provided the property is* paid for out of their own funds.

~~C. Hospitals and nursing homes (conducted for profit and not for profit.)~~

~~When any~~ *B. Any* hospital or nursing home, *whether for profit or nonprofit, which,* through any division or department, engages in selling tangible personal property, ~~it must~~ *shall* register as a dealer and collect and ~~pay~~ *remit* the tax *to the department . However, medicines and medical supplies, such as aspirin, sterile dressings, incontinent briefs, etc., which are provided to patients and itemized on their bills are not deemed to be sales of tangible personal property to patients. Instead, they are deemed to be purchased for use or consumption by a hospital or nursing home in providing its services and subject to the tax as provided in subsection A of this section.*

Except as provided herein, purchases of tangible personal property for subsequent resale may be made exempt from the tax under a certificate of exemption, Form ST-10. For example, medical supplies for subsequent resale may be purchased exempt from the tax by a nursing home pharmacy which operates as a separate and distinct entity from the nursing home. Bulk purchases of prescription medicines as defined in VR 630-10-65 and durable medical equipment as defined in VR 630-10-64.1 may be made exempt of the tax by nonprofit hospitals and nonprofit licensed nursing homes. However, purchases of such medicines and equipment by a profit hospital or licensed nursing home are taxable unless made on behalf of specific patients.

~~For sales of medicines, drugs and certain other~~

~~enumerated items of tangible personal property sold on prescriptions of licensed physicians or dentists;~~ § ~~630-10-65.~~

~~D.~~ *§ 3.* Clinics.

A. Unless a clinic is an integral *or constituent* part of a *nonprofit* hospital ~~conducted not for profit~~ or is itself licensed as a hospital under the provisions of ~~Virginia Code Section~~ *§* 32.1-123 *of the Code of Virginia* and conducted not for profit, sales to such a clinic are taxable. *Sales to entities established by nonprofit hospitals and nonprofit licensed nursing homes, such as laboratories and physical therapy units, are exempt from the tax provided such entities are an integral, or constituent part of the institution. Separately incorporated laboratories, physical therapy units, and other entities are not entitled to make purchases exempt from the tax.*

B. Specific types of clinics are described in this subsection:

1. Free health care clinics. Purchases of tangible personal property for use or consumption by a nonprofit nonstock clinic organized under the laws of Virginia solely to furnish free health care services by licensed physicians and dentists are exempt from the tax. The clinic must be exempt from income taxation under § 501(c)(3) of the Internal Revenue Code to be eligible for the exemption.

2. Community health centers. Purchases of tangible personal property for use or consumption by a community health center exempt from taxation under § 501(c)(3) of the Internal Revenue Code and established for the purpose of providing health care services to areas within the Commonwealth that contain a medically underserved population are exempt from the tax.

~~E. Hospital~~ *§ 4. Nonprofit hospital* cooperatives and hospital corporation conducted not for profit.

~~The tax does not apply to sales~~ *Sales* of tangible personal property to *nonprofit* hospital cooperatives or hospital corporations ~~conducted not for profit~~ when organized and operated for the sole purpose of providing services exclusively to *nonprofit* hospitals, ~~conducted not for profit~~ *are not subject to the tax . Sales to a nonprofit hospital cooperative or nonprofit hospital corporation which provides services of any kind or to any extent to other than a nonprofit hospital are taxable.*

Example 1. Sales to a nonprofit hospital parent corporation which owns and operates both nonprofit hospitals and other profit and nonprofit entities, are subject to the tax, since the parent corporation is not organized and operated for the sole purpose of providing services exclusively to its nonprofit hospitals.

Example 2. Sales to a nonprofit corporation or cooperative which provides services on an outpatient basis for which a patient is billed directly, are taxable. The corporation or cooperative is providing services to individuals and not exclusively to nonprofit hospitals.

~~F. Homes for adults conducted not for profit. Effective July 1, 1980, the tax does not apply to sales of tangible personal property to homes for adults as defined by Virginia Code Section 63.1-172A conducted not for profit. The tax applies to sales of tangible personal property to all other homes for adults whether conducted for profit or not. Section revised 7/79; 1/70; 3/83.~~

VA.R. Doc. No. R94-115; Filed October 26, 1993, 10:24 a.m.

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Title of Regulation: **VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Furthermore, it reviews the regulations to determine whether certain regulations dealing with similar matters should be consolidated and whether those dealing with numerous matters should be divided into separate regulations. It was determined that a separate regulation is appropriate in this instance in order to more fully explain the exemptions available for medical equipment and supplies.

Purpose: This regulation clarifies the application of the retail sales and use tax to medical equipment and supplies.

Substance: This regulation clarifies the application of the retail sales and use tax to sales of wheelchairs, braces and crutches, prosthetic devices, orthopedic appliances, and durable medical equipment, generally. The above items are exempt from the tax when purchased by or on behalf of an individual. Supplies generally are taxable except for certain supplies purchased by diabetics and for use in hemodialysis and peritoneal dialysis and supplies specially designed for use with exempt durable medical equipment. Equipment used in hemodialysis and peritoneal dialysis is exempt from the tax regardless of the nature of the purchaser.

The regulation clarifies the application of the tax tc

transactions in which an item is sold to an individual, but is billed to a third party payor (e.g., Medicaid or an insurance company) for payment.

The provisions of this regulation were previously part of VR 630-10-65 dealing with medicines and drugs, but is being separated out to more fully address the issues. The regulation includes numerous examples to provide guidance to users.

Issues: Regulatory provisions should be reviewed periodically to ensure that they reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to purchases of medical equipment and supplies.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in adopting the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include medical equipment and supplies dealers. Since this regulation is intended to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation.

Summary:

This regulation clarifies the application of the retail sales and use tax to sales of wheelchairs, braces and crutches, prosthetic devices, orthopedic appliances, and durable medical equipment generally. The above items are exempt from the tax when purchased by or on behalf of an individual. Supplies generally are taxable except for certain supplies purchased by diabetics, for use in hemodialysis and peritoneal dialysis, and supplies specially designed for use with exempt durable medical equipment. Equipment used in hemodialysis and peritoneal dialysis is exempt from the tax regardless of the nature of the purchaser.

The regulation clarifies the application of the tax to transactions in which an item is sold to an individual, but is billed to a third party payor (e.g., Medicaid or an insurance company) for payment.

The provisions of this regulation were previously part of VR 630-10-65 dealing with medicines and drugs, but is being separated out to more fully address the issues.

VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.

§ 1. Definitions.

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

"Durable medical equipment" means equipment which (i) can withstand repeated use; (ii) is primarily and customarily used to serve a medical purpose; (iii) generally is not useful to a person in the absence of illness or injury; and (iv) is appropriate for use in the home. Equipment must meet all of these criteria to qualify as exempt durable medical equipment.

"Licensed physician" includes only those persons licensed as medical doctors and does not include veterinarians, chiropractors, opticians, optometrists and similar persons.

"Orthopedic appliances" means a device which is worn on the body to correct a deformity or injury to skeletal, muscular or circulatory parts of the body, or required in postoperative treatment. It does not include plaster of Paris and fiberglass casts.

"Prosthetic devices" means devices which replace a missing part or function of the body and includes any supplies physically connected to such devices. It also includes collagen, silicone, saline and other implants to the extent that they are used to replace a missing body part as in reconstructive surgery. However, implants and collagen used for cosmetic purposes are not prosthetic devices for the purposes of this regulation.

§ 2. Generally; exemptions; purchases on behalf of an individual.

A. Hypodermic syringes and artificial eyes are exempt from the tax when dispensed by or sold on prescription or work order of licensed physicians or optometrists. Hemodialysis and peritoneal dialysis equipment, supplies and drugs used in dialysis are exempt from the tax regardless of the nature of the purchaser.

The following items may be purchased exempt from the tax when such items or parts are purchased by or on behalf of an individual for use by such individual:

1. Wheelchairs and their repair parts,

2. Braces and crutches,

3. Prosthetic devices,

4. Orthopedic appliances,

5. Catheters and urinary accessories,

6. Insulin syringes, equipment, devices, and chemical reagents which may be used by a diabetic to test or monitor blood or urine, and

7. Other durable medical equipment.

B. In order to be deemed a purchase "on behalf of" an individual, an item must be specifically bought for the individual. Purchases by a profit hospital, clinic, or other medical facility, licensed nursing home, home for adults or by a licensed physician for use in his professional practice are deemed to be purchases on behalf of an individual only if purchased for a specific individual. An item withdrawn from an inventory of items purchased in bulk are not deemed to be purchased on behalf of an individual even if the item is modified or fitted for a specific individual, and thus are taxable.

§ 3. Durable medical equipment, specifically.

Equipment which satisfies the definition of durable medical equipment set forth in § 1 of this regulation and which is purchased by or on behalf of an individual as provided in § 2 is exempt from the tax. The fact that an item is purchased from a medical equipment supplier is not dispositive of its exempt status.

Supplies specifically designed for use with durable medical equipment are exempt from the tax. General purpose supplies, such as bandages, tape, gauze, dressings, and incontinence pads, are taxable, even if used with exempt durable medical equipment. The tax treatment of nonprescription drugs is addressed in VR 630-10-65.

Example. Patient kits which are attached to a device by velcro straps and, since they are in direct contact with the patient and are discarded when sanitary conditions dictate, are considered an intrinsic part of the rehabilitative process in that they are specifically designed for use with the devices and thus are exempt.

In addition, the same item may be taxable in one instance and exempt in another. For example, liquid nutrients for use with enteral/parenteral equipment are exempt, yet those sold as oral dietary supplements are taxable.

The following is a list of those types of items which constitute durable medical equipment. This is a listing of general categories of products; specific items must still meet the definition set forth above. The listing is intended to be exemplary and not all inclusive.

1. Oxygen equipment.

a. Air oxygen mixers

b. Cylinder stands, support devices

c. Cylinder transport devices (sheaths, carts)

d. Emergency oxygen delivery units

e. Face masks

f. Liquid oxygen base dispenser

g. Liquid oxygen portable dispenser

h. Nasal cannulas

i. Oxygen concentrators

j. Oxygen conserving devices

k. Oxygen cylinders

l. Oxygen fittings, accessories

m. Oxygen humidifiers

n. Oxygen tubing

o. Oximeter

p. Regulators, flowmeters

q. Tank wrench

2. Respiratory therapy equipment.

a. APNEA monitors and accessories

b. Aerosol compressors (stationary and portable)

c. Air oxygen mixers

d. Aspirators

e. CPAP and CPAP accessories (devices for preventing sleep apnea in adults)

f. Emergency oxygen delivery units

g. IPPB (Intermittant Positive Pressure Breathing), circuits, devices and supplies

h. Manual resuscitators

i. Nebulizers, tubing

j. Percussors, vibrators

k. Room humidifiers (with script)

l. Tracheostomy and suction supplies

m. Ultrasonic nebulizers

n. Volume ventilators, respirators and related device supplies

3. Patient care equipment, physical and occupational therapy.

a. Bathroom items

(1) Bath benches

(2) Paraffin baths

(3) Shampoo trays

(4) Shower seating

(5) Shower grip bars

(6) Toilet seats - raised

(7) Toilet safety frames

b. Bedding and seating items

(1) Bed pans

(2) Bed rails

(3) Bedside commodes

(4) Decubitis seating pads, bed pads

(5) Eggcrate mattresses

(6) Foam seating pads

(7) Foam wedges

(8) Geriatric chairs

(9) Hospital beds

(10) Lift recliners

(11) Overbed tables

(12) Posture back supports

(13) Sitting and sleeping cushions

(14) Trapeze bars - bar stand

c. Communication devices

(1) Alert devices

(2) Communication aids for physically impaired

(3) Writing and speech aids for the impaired

(4) TDD, telecaptioners

d. Occupational therapy items

(1) Dressing aids, button loops, zipper aids, etc.

(2) Eating and drinking aids

(3) Grooming aids, dental aids

(4) Household aids for the impaired

(5) Reaching aids

(6) Specialized seating, desks, work stations

(7) Specially designed hand utensils

e. Patient movement, transportation items

(1) Crawlers

(2) Crutches, crutch pads, tips

(3) Fitted strollers

(4) Patient lifts

(5) Patient lifts slings

(6) Post operative braces

(7) Patient transport devices, boards

(8) Sitting and sleeping cushions

(9) Stairglides, lifts in home

(10) Walking canes, quad canes, accessories

(11) Walkers, accessories

(12) Wheel walkers

(13) Wheelchairs

f. Physical therapy items

(1) Bone fracture therapy devices

(2) Continuous passive motion devices

(3) Hand exercise equipment putty

(4) Muscle stimulators

(5) Pneumatic compression units and accessories

(6) Transcutaneous nerve stimulators (TENS units)

(7) Wrist and leg weights (rehab. related)

g. Miscellaneous items

(1) Alternating pressure pads

(2) Cardiac pacemakers

(3) Catheter devices and supplies

(4) Enteral and parenteral feeding equipment, supplies (tubes, pumps, containers)

(5) Hydrocollators

(6) Hydrothermal heating pads

(7) I.V. stands

(8) Infusion pumps

(9) Ostomy supplies and devices

(10) Restraints

(11) Splints, holders

(12) Standing frames, devices and accessories

(13) Stethoscope

(14) Traction stands, pulleys, etc.

§ 4. Diabetic supplies.

Insulin syringes, equipment, devices and chemical reagents which are used by a diabetic to test or monitor blood or urine are exempt from the tax. Exempt items include, but are not limited to, (i) urine glucose and blood testing strips, (ii) blood glucose monitors, (iii) finger lancing devices, (iv) insulin injection devices, (v) lancets to obtain blood samples, (vi) syringe magnifying devices, and (vii) syringe needle clippers.

Items that are subject to the tax include, but are not limited to, (i) special diabetic foods, (ii) sweeteners, (iii) cookbooks, (iv) batteries for operating the testing devices, (v) Medicool cases, or (vi) supplies used in conjunction with insulin injections, such as sterile pads, cotton balls or sterilizing equipment.

§ 5. Orthopedic appliances.

The following is a list of those items deemed to be exempt orthopedic appliances. The listing is intended to be exemplary and not all inclusive.

1. Lumphademic sleeves for postoperative mastectomies;

2. Shoes designed and constructed or reconstructed and fitted to a particular individual to correct abnormalities of the feet or legs. This includes stock or standard shoes with wedges, bars, crescents, pads, wafers or other similar devices added;

3. Shoes with mechanical ankle or leg braces incorporated therein;

4. Supports, such as abdominal supports, dorsal lumbar supports, lumbar sacral supports, or sacroiliac supports; or

5. Surgical hose for the treatment or control of phlebitis, fluid dynamics, varicose veins, venous insufficiency and arterial insufficiency.

§ 6. Hemodialysis and peritoneal dialysis.

Hemodialysis and peritoneal dialysis equipment, supplies and drugs used in dialysis are exempt from the tax. This exemption is applicable regardless of the nature of the purchaser. Therefore, purchases of dialysis equipment, supplies and drugs for use in the actual treatment of patients by physicians, individuals, profit and nonprofit hospitals, and other entities, are exempt from the tax.

Exempt items include, but are not limited to, solutions, needles, syringes, alcohol, and catheters used in the actual dialysis treatment, and water treatment systems for use with dialysis units. Tape and bandages are exempt to the extent they are used to hold the dialysis needle in place. However, tape and bandages used to dress the patient after removal of the needle are taxable. General purpose supplies such as face masks, paper towels, and trays; general purpose equipment such as examination tables and scales; and general purpose instruments such as stethoscopes, forceps and surgical scissors, are taxable. Facilitative items not used in the actual treatment are also taxable.

The fact that the use of a particular item may be required by federal, state or local law is not, by itself, dispositive of its usage in the actual dialysis treatment.

§ 7. Communications aids for the handicapped.

Communications aids for the physically handicapped and writing and speech aids for the impaired may be purchased exempt from the tax as exempt durable medical equipment. In addition, pursuant to subdivision 9 of § 58.1-609.7 of the Code of Virginia, special typewriters and computers and related parts and supplies specifically designed for those products used by handicapped persons to communicate when such equipment purchase is pursuant to a licensed physician's prescription may be purchased exempt from the tax. For example, optical scanners that convert printed information into synthesized speech may be purchased exempt from the tax when prescribed by a physician.

§ 8. Hypodermic syringes and artificial eyes.

Hypodermic syringes sold on prescriptions or work orders of licensed physicians are exempt from the tax. See VR 630-10-65 for an explanation of the documentation required of dealers making such sales. Sales of hypodermic syringes not on a prescription and except as provided in § 4 of this regulation are subject to the tax. A dealer's purchases of hypodermic syringes, whether for filling prescriptions or other retail sales, may be made exempt from the tax under a certificate of exemption, Form ST-10.

Artificial eyes dispensed by or sold on prescriptions or work orders of licensed physicians, ophthalmologists or optometrists, are exempt from the tax. A dealer may purchase artificial eyes for subsequent resale exempt from the tax under a certificate of exemption, Form ST-10.

§ 9. Reimbursement by third parties.

The application of the tax to transactions in which an item is sold to an individual, but is billed to a third party payor (e.g., Medicaid or an insurance company) for payment, is determined as of the time of sale to the individual, and does not depend upon the availability or source of reimbursement for the items sold. For example, if the durable medical equipment is exempt and billed to a third party, it remains exempt. However, if the equipment is not considered exempt durable medical equipment and no other exemption applies, then it is taxable regardless of to whom it is billed. The tax is due, not on the total charge submitted for reimbursement, but instead is based upon the actual amount reimbursed. The actual amount reimbursed is allocated to the sales price, sales tax, and other nontaxable charges based on the percentages that those charges represent to the total charge originally submitted for reimbursement.

VA.R. Doc. No. R94-133; Filed October 26, 1993, 10:27 a.m.

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Title of Regulation: **VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation is not reflective of current policy due, in part, to legislative changes relating to the subject matter covered by the regulation, it is being revised.

Purpose: This regulation clarifies the application of the retail sales and use tax to prescription medicines and drugs, nonprescription drugs and proprietary medicines, and controlled drugs.

Substance: This regulation reflects legislative changes relating to purchases of controlled drugs by licensed physicians, and the exemption for nonprescription drugs effective July 1, 1994. The terms "nonprescription drug" and "proprietary medicine" are defined and several categories and examples of taxable and exempt drugs and drug-related products are provided. The regulation also clarifies that implants are not controlled drugs which may be purchased exempt by physicians, but devices which generally are taxable.

Provisions relating to medical equipment and prescription medical appliances have been moved from this regulation to separate regulations for clarity purposes.

Issues: Regulatory provisions should be reviewed periodically to ensure that they reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to prescription medicines and drugs, and new policy with respect to nonprescription drugs and proprietary medicines and controlled drugs.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation and a listing of exempt/taxable drugs and supplies to the affected entities. It will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. However, it is anticipated that the department will incur annual recurring costs of approximately $32,000 each year in updating, printing and mailing a brochure explaining the exemption.

Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred. However, substantial taxpayer education will be required because of the complexity of the nonprescription drug issue.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include retailers of prescription and nonprescription drugs and other drug suppliers. It is anticipated that this regulation will have an impact on all retailers of nonprescription drugs in Virginia (approximately 110,000 retailers, including pharmacies, convenience, department and grocery stores, and gift

shops).

D. Projected Cost to Regulated Entities: It is anticipated that the retailers of nonprescription drugs will incur costs in developing procedures for maintaining adequate records of purchases and sales of exempt items as well as in educating employees. Other entities impacted by this regulation should incur no additional costs because of the regulation.

Summary:

This regulation clarifies the application of the retail sales and use tax to prescription medicines and drugs, nonprescription drugs and proprietary medicines, and controlled drugs. It reflects legislative changes relating to purchases of controlled drugs by licensed physicians, and the exemption for nonprescription drugs effective July 1, 1994. The terms "nonprescription drug" and "proprietary medicine" are defined and several categories and examples of taxable and exempt drugs and drug-related products are provided. The regulation clarifies that implants are not controlled drugs which may be purchased exempt by physicians, but devices which generally are taxable.

VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.

~~A. Generally. The tax does not apply to medicines, drugs, hypodermic syringes, artificial eyes, contact lenses, eyeglasses and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, dentists, optometrists, audiologists, hearing aid dealers and fitters or ophthalmologists, and controlled drugs purchased by a licensed physician for use in his professional practice.~~

~~The tax does not apply to wheelchairs and repair parts, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, insulin and insulin syringes, and equipment, devices or chemical reagents which may be used by a diabetic to test or monitor blood or urine and other durable medical equipment and devices, related parts and supplies specifically designed for such equipment when such items or parts are purchased by or on behalf of an individual using these items. Purchases of these items by a hospital or licensed nursing home conducted for profit or by a licensed physician for use in his professional practice are subject to tax.~~

PART I.
DEFINITIONS.

~~a.~~ *§ 1.1.* Definitions.

~~As used in this regulation, the~~ *The following* words and ~~phrases set forth below shall be given~~ *terms, when used in this regulation, shall have* the following meaning : *unless the context clearly indicates otherwise:*

~~1. Prosthetic devices. "Prosthetic devices" shall mean devices which replace a missing part or function of the body and shall include any supplies physically connected to such devices.~~

~~2. Controlled drugs.~~

"Controlled drugs" ~~shall mean~~ *means* those drugs itemized ~~under Virginia Code Section 54-524.84:1 et seq.~~ *in Article 5 (§ 54.1-3443 et seq.) of Chapter 34 of Title 54.1 of the Code of Virginia* , but ~~shall include~~ *includes* only medicines and drugs and not devices. *For the purposes of this regulation, however, the term shall not include collagen, silicone or saline implants, as such are deemed to be devices.*

"Cosmetic" means all articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness or altering the appearance, and articles intended for use as a component of any such articles. It includes, but is not limited to, cold creams, suntan products, makeup, and body lotions.

"Device" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or to affect the structure or any function of the human body, and designated by the Virginia Board of Pharmacy as such.

~~3. Licensed physician.~~ *"Licensed physician"* ~~shall include~~ *includes* only those persons licensed as medical doctors and ~~shall~~ *does* not include veterinarians, chiropractors, opticians, optometrists and similar persons.

"Nonprescription drug" means a drug or any substance or mixture of substances containing medicines, pharmaceuticals, or drugs for which no prescription is required and generally sold for internal or topical use in the cure, mitigation, treatment, or prevention of disease in human beings, or which are intended to affect the structure or any function of the human body. It excludes food, devices and component parts, or accessories for devices.

"Prescription medicines and drugs" means medicines and drugs sold on prescriptions or work orders of licensed physicians, dentists, ophthalmologists, and veterinarians.

"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which (i) does not contain any controlled substance or marijuana as defined in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and is not in itself poisonous, and (ii) is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the

requirements of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia and applicable federal law. It does not include any drug intended for injection.

"Toilet articles" means any article advertised or held out for sale for grooming purposes and those articles which are customarily used for grooming purposes, regardless of the name by which they may be known including, but not limited to, soaps, toothpastes, hair sprays, shaving products, colognes, perfumes, shampoos, deodorants, and mouthwashes.

PART II.
PRESCRIPTION MEDICINES AND DRUGS, NONPRESCRIPTION DRUGS AND PROPIETARY MEDICINES, AND CONTROLLED DRUGS.

§ 2.1. Generally.

Sales of prescription medicines or drugs, including oxygen, or nonprescription drugs and proprietary medicines are exempt from the tax.

~~C. Medicines~~ *§ 2.2. Prescription medicines* and drugs ~~, specifically~~ *; sales to consumers; dealer requirements; sales to hospitals and nursing homes .*

~~1.~~ *A.* Sales of *prescription* medicines or drugs, including oxygen, on written prescriptions ~~of physicians or dentists~~ are exempt from the tax. Sales of ~~medicines and drugs~~ *prescription medicines* on a ~~physician's or dentist's~~ telephone (oral) prescription are exempt from the tax provided the prescription is reduced to writing, ~~signed~~ *initialed* by the pharmacist, and filed in the same manner as an original written prescription. ~~Medicines or drugs sold pursuant to the refilling of~~ *Refills of prescription medicines and drugs and hypodermic syringes pursuant to* a ~~physician's or dentist's~~ prescription are also exempt from the tax.

~~Vendors~~ *B. Dealers* making sales of *prescription* medicines or drugs ~~or hypodermic needles pursuant to physician's or dentist's prescriptions~~ or in refilling the same must keep sales records segregating the prescription sales. All original prescriptions must be filed and kept available for inspection by the ~~Department of Taxation~~ *department* . When a sale is made to refill a prescription, the seller's records of the refill must carry the number of the original prescription for reference *purposes . A dealer's purchases of medicines and drugs for filling prescriptions are not subject to the tax and may be made under a certificate of exemption, Form ST-10.*

~~2. Sales of controlled drugs to a licensed physician for use in his professional practice are exempt from the tax.~~

~~3. Sales of medicines or drugs to users or consumers, except when the sales are made pursuant to a prescription of a physician or dentist or as a refill of a written prescription, as referred to in paragraph (A) are subject to the tax.~~

C. Sales of *prescription* medicines and drugs *and hypodermic syringes* to *profit* hospitals and nursing homes ~~conducted for profit~~ are ~~subject to the tax~~ *taxable* unless the sales are made as a result of a written prescription ~~of a licensed physician~~ for a particular patient under the care of the hospital or nursing home. Sales to *nonprofit* hospitals or licensed nursing homes ~~conducted not for profit~~ , however, are ~~not subject to~~ *exempt from* the tax. For more information about hospitals and nursing homes, see § *VR* 630-10-47.

~~4. Purchases of drugs and hypodermic syringes by the dealer for filling prescriptions are not subject to the tax and must be made under certificate of exemption.~~

§ 2.3. Nonprescription drugs and proprietary medicines; exempt sales; taxable sales.

A. Sales or purchases of nonprescription drugs and proprietary medicines are exempt from the tax. This exemption is applicable regardless of the nature of the purchaser. Therefore, individuals, physicians, profit and nonprofit hospitals, and other entities may purchase such drugs and medicines exempt from the tax. Vendors making sales of nonprescription drugs and proprietary medicines shall keep records segregating purchases and sales of exempt items.

B. The following categories of nonprescription drugs and proprietary medicines are generally exempt:

1. Analgesics (internal and topical, for relief of pain or discomfort) such as acetaminophen, aspirin, Absorbine Jr., Ben-Gay, Bufferin, Desitin, Diaparene, ibuprofen, Infra-rub, Midol, Advil, Witch Hazel, Lanacane, Cruex, liniments, and musterole.

2. Antacids (for relief of acidity, stomach discomfort, indigestion) such as Alka Seltzer, Chooz, Di-Gel, Gelusil, Maalox, Mylanta, Riopan, Rolaids, and Tums.

3. Antiseptics (for treatment and prevention of infection) such as Clearsil Acne Creme, alcohol swabs, Bactine, boric acid, Campho-Phenique, Desenex, Foille, Medi-Quik, Clearasil Acne Treatment Cream, peroxide medicinal (not for bleaching), Phisoderm, rubbing alcohol, general wound cleaning products, and Sea Breeze.

4. Burn remedies (for treatment of burns or to relieve pain from burns, including sunburn) such as Americaine, nupercainal ointment, Solarcaine, and Surfacaine.

5. Cough, cold or sore throat remedies such as inhalants, Coricidin, Aspergum, Actifed Tablets, Contac Capsules, Vaporub, Allerest Tablets, Cold Factor Capsules, Formula 44, Nyquil Cold Medicine, Robitussin, Chloraseptic Lozenges and Sprays, and

medicated cough drops.

6. Dental products such as analgesic toothache preparations, and teething preparations, and dental washes, such as plaque removers and fluoride rinses.

7. Diarrheal medications such as Kaopectate and Pepto Bismal.

8. Emollients (antiseptic, protective, antibiotic and anti-inflammatory) such as antibiotic ointments, boric acid, Caladryl, calamine lotion, camphor ice, medicated lip balms such as Blistex, Chap Stick, Cold Sore Lip Balm, Lobana Loto Creme, and zinc oxide ointment.

9. Eye preparations (for healing, treatment, or other therapeutic use) such as contact lens lubricating and rewetting solutions, drops such as Clear Eye Drops, Murine, Visine, ointments such as Stye Ophthalmic Ointment, and washes.

10. Foot products (for treatment of infection or for removal of corns or callouses) such as athlete's foot preparations and other medicated foot powders, creams or sprays but not deodorants.

11. Laxatives and cathartics such as Alophen pills, Ex-Lax, Feenamint, Fiberall, Milk of Magnesia, Mineral Oil, and Metamucil, and enemas.

12. Other packaged preparations such as Preparation H, Anusol Suppositories, Nupercainal Suppositories, Cortaid Ointment, Betadine Solution, Cortef Feminine Itch Cream, Monistat, Gynelotrimin, wart removers.

The above list is intended to be exemplary and not all inclusive.

C. The following categories are examples of items which are not regarded as nonprescription drugs or proprietary medicines, and therefore do not qualify for the exemption:

1. Cosmetic and toilet articles, as defined in § 1.1, except for those containing medicinal ingredients and principally for use in the treatment of medically-related conditions, such as dandruff shampoos. Taxable cosmetics and toilet articles include, but are not limited to deodorants, beauty preparations, facial and hand creams and lotions, feminine hygiene items, powders, shampoos, oils, soaps, teeth cleaning preparations, and suntan preparations.

2. Contraceptive items.

3. Exempt items when packaged with taxable items such as contact lens lubricating solutions packaged with disinfecting solutions or first aid kits containing exempt antiseptic ointments and taxable bandages.

4. Feminine items, such as sanitary napkins and douches, except those items medicinally treated.

5. First aid medical supplies such as adhesive tape, plasters, and bandages, and similar supplies.

6. Household disinfectants and insecticides.

7. Reducing products such as Ayds, RDX, Tafon, Slim Fast, and similar preparations.

8. Vitamins sold as dietary supplements or adjuncts except when sold pursuant to a physician's prescription.

The above list is intended to be exemplary and not all inclusive.

§ 2.4. Controlled drugs.

Controlled drugs purchased for use by a licensed physician in his professional practice regardless of whether such practice is organized as a sole proprietorship, partnership or professional corporation, or any other type of corporation in which the shareholders and operators are all licensed physicians engaged in the practice of medicine, but excluding hospitals, nursing homes, clinics, and similar corporations not otherwise exempt from the tax, are exempt from the tax.

Controlled drugs purchased by profit hospitals, clinics and nursing homes and similar entities are taxable. However, sales to nonprofit hospitals or licensed nursing homes are exempt from the tax.

~~D. Eyeglasses and other ophthalmic aids and supplies.~~

~~1. Sales of eyeglasses ground on prescription of physicians, ophthalmologists or optometrists, including frames as an integral part, are not subject to the tax.~~

~~2. Eyeglass frames sold in connection with the repair or replacement of eyeglasses ground on prescription of physicians, ophthalmologists or optometrists are not subject to the tax.~~

~~3. Sales of eyeglass frames, optical merchandise and optical supplies by optical supply houses to dealers, including ophthalmologists and optometrists, for resale are not subject to the tax until sold at retail by such purchasers, at which time the rules set forth in this section apply.~~

~~4. Sales of ophthalmic instruments and supplies to physicians, ophthalmologists, optometrists and other users are subject to the tax.~~

~~5. All sales to users or consumers of eyeglass frames, sunglasses not ground on prescription, cases, solutions for cleaning eyeglasses, barometers, telescopes, binoculars, opera glasses and similar items are subject~~

to the tax. All persons, including opticians, optometrists and ophthalmologists making such sales are required to register as dealers and collect and pay the tax due. However, sales of eyeglass frames or repair parts for prescription eyeglasses are exempt from the tax if the prescription for the glasses is on file with the person replacing or repairing the eyeglass frames.

6. The exemptions outlined in this regulation have no application whatever to retail sales of eyeglasses and other optical goods not prescribed by licensed optometrists or ophthalmologists. All such sales are subject to the tax.

E. Wheelchairs, braces, prosthetic devices, orthopedic appliances, etc.

1. Generally. The tax does not apply to wheelchairs and their repair parts, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, insulin and insulin syringes, and equipment devices and chemical reagents which may be used by a diabetic to test or monitor blood or urine, when such items are purchased by or on behalf of an individual using these items. For example, if individual A purchases a wheelchair for use by individual B, no tax will apply to the transaction since the wheelchair is purchased on behalf of individual B. However, purchases of these items by a profit hospital, licensed nursing home, home for adults or by a licensed physician for use in his professional practice are deemed to be purchases on behalf of an individual only if purchased for a specific individual. Items withdrawn from an inventory of items purchased in bulk are not deemed to be purchased on behalf of an individual. (See subsection (G) below.)

2. Hemodialysis and peritoneal dialysis. Hemodialysis and peritoneal dialysis equipment, supplies and drugs used in dialysis are not subject to the tax. This exemption is applicable regardless of the nature of the purchaser. Therefore such dialysis equipment, supplies and drugs may be purchased exempt by physicians, individuals, profit and nonprofit hospitals, and other entities.

F. Durable medical equipment. The tax does not apply to durable medical equipment purchased by or on behalf of an individual. Durable medical equipment is that which: (1) can withstand repeated use; (2) is primarily and customarily used to serve a medical purpose; (3) generally is not useful to a person in the absence of illness or injury; and (4) is appropriate for use in the home. In order for an item to be exempt from the tax, it must meet all of the above criteria. The fact that an item is purchased from a medical equipment supplier is not dispositive of its exempt status; the item must satisfy the definition of durable medical equipment.

Following is a list of those types of items which constitute durable medical equipment. This is a listing of general categories of products; specific items must still meet the definition set forth above. The listing is intended to be exemplary and not all inclusive.

Oxygen equipment

Oxygen cylinders

Cylinder transport devices (sheaths, carts)

Cylinder stands, support devices

Regulators, flowmeters

Tank wrench

Oxygen concentrators

Liquid oxygen base dispenser

Liquid oxygen portable dispenser

Oxygen tubing

Nasal cannulas

Face masks

Oxygen humidifiers

Oxygen fittings, accessories

Respiratory therapy equipment

Room humidifiers (with script)

Aspirators

Aerosol compressors (stationary and portable)

Ultrasonic nebulizers

Volume ventilators, respirators and related device supplies

Percussors, vibrators

IPPB, circuits, devices and supplies

Air oxygen mixers

Manual resuscitators

Nebulizers, tubing

Emergency oxygen delivery units

Patient care equipment, physical and occupational therapy

Hospital beds

~~Trapeze bars - bar stand~~

~~Bed rails~~

~~Geriatric chairs~~

~~Lift recliners~~

~~Bedside commodes~~

~~Overbed tables~~

~~Patient lifts~~

~~Patient lifts slings~~

~~Traction stands, pulleys, etc.~~

~~Shower seating~~

~~Shower grip bars~~

~~Raised toilet seats~~

~~Toilet safety frames~~

~~Walking canes, quad canes, accessories~~

~~Walkers~~

~~Wheel walkers~~

~~Walker accessories~~

~~I.V. stands~~

~~Crawlers~~

~~Posture back supports for seating~~

~~Posture back supports~~

~~Wheelchairs~~

~~Crutches, crutch pads, tips~~

~~Restraints~~

~~Standing frames, devices and accessories~~

~~Colostomy supplies and devices~~

~~Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)~~

~~Catheter devices and supplies~~

~~Hand exercise equipment putty~~

~~Specially designed hand utensils~~

~~Leg weights (rehab. related)~~

~~Paraffin baths~~

~~Hydro-collators~~

~~Hydro-therm heating pads~~

~~Communication aids for physically impaired~~

~~Specialized seating, desks, work stations~~

~~Foam wedges~~

~~Writing and speech aids for the impaired~~

~~Dressing aids, button loops, zipper aids, etc.~~

~~Grooming aids, dental aids~~

~~Eating and drinking aids~~

~~Splints, holders~~

~~Household aids for the impaired~~

~~Shampoo trays~~

~~Reaching aids~~

~~Foam seating pads~~

~~Decubitis seating pads, bed pads~~

~~Fitted strollers~~

~~Alternating pressure pads~~

~~Stethoscope~~

~~Sitting and sleeping cushions~~

~~Patient transport devices, boards~~

~~Stairglides, lifts in home~~

~~Transcutaneous nerve simulators~~

~~Muscle stimulators~~

~~Bone fracture therapy devices~~

~~G. Purchases on behalf of an individual. The exemption for wheelchairs and repair parts, braces, crutches, prosthetic devices, orthopedic appliances, catheters, urinary accessories, insulin and insulin syringes, equipment, devices or chemical reagents used by a diabetic to test or monitor blood or urine, and durable medical equipment and devices and related parts and supplies specifically designed for such equipment extends to items purchased "on behalf of" an individual for his use. In order to be deemed a~~

~~purchase on behalf of an individual, the item must be specifically bought for the individual. If items are purchased in bulk and then dispensed to individual patients, no exemption is applicable even if the item is modified or fitted for a specific individual.~~

~~For example, if a physician maintains an inventory of crutches or ace bandages which are dispensed to individual patients as needed, the purchase of these items is not exempt since the original purchase was not made on behalf of a specific patient. Conversely, if a physician determines that a patient needs a brace and purchases a brace specifically designed for that patient, the purchase is made on behalf of the individual and will not be subject to the tax.~~

~~For dentures and other prosthetic devices relating to the practice of dentistry, see § 630-10-33. Section revised 7/69; 11/79; 11/85.~~

VA.R. Doc. No. R94-132; Filed October 26, 1993, 10:29 a.m.

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Title of Regulation: **VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. While this regulation reflected current policy, it was not styled in the form required by the Virginia Register, and thus is being revised.

Purpose: This regulation clarifies the application of the retail sales and use tax to purchases and sales by physicians, surgeons, and other practitioners of the healing arts.

Substance: The revisions to this regulation are nonsubstantive in nature in that they include primarily cosmetic or format changes consistent with the requirements of the Virginia Register. The regulation defines the term "practitioner of the healing arts" which has not been previously defined.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues and consistency with format requirements of the Virginia Register. This regulation clarifies the department's policy with respect to purchases and sales by physicians, surgeons, and other practitioners of the healing arts.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include physicians, surgeons and other practitioners of the healing arts. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The regulation clarifies the application of the retail sales and use tax to purchases and sales by physicians, surgeons, and other practitioners of the healing arts. The revisions to this regulation are nonsubstantitive in nature in that they include primarily cosmetic or format changes.

VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts.

§ 1. Definitions.

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

"Controlled drugs" mean those drugs itemized in Article 5 (§ 54.1-3443 et seq.) of Chapter 34 of Title 54.1 of the Code of Virginia, but include only medicines and drugs and not devices.

"Licensed physician" includes only those persons licensed as medical doctors and does not include veterinarians, chiropractors, opticians, optometrists and similar persons.

"Practitioner of the healing arts" includes any person

who practices in the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities.

~~A.~~ *§ 2.* Sales.

The charges for professional services performed by physicians, surgeons and other " practitioners of the healing arts " are not subject to the tax. If a practitioner *or professional* regularly makes sales of tangible personal property, he is required to register as a dealer and collect and ~~pay~~ *remit* the tax *to the department* on *his* retail sales *except for sales of tangible personal property otherwise exempt (e.g., as exempt durable medical equipment)* .

~~B.~~ *§ 3.* Purchases *generally; exempt purchases; medical equipment* .

A. Physicians, surgeons and other " practitioners of the healing arts " are the consumers of all tangible personal property used in performing their professional services , *except as provided in this regulation* . They must pay the tax to their suppliers at the time of purchase. If ~~the~~ *a* supplier fails to collect the tax, the practitioner must ~~pay~~ *remit* the *use* tax *to the department* on a Consumer's Use Tax Return, Form ST-7.

~~The only exception is that licensed~~ *B. Licensed* physicians may purchase controlled drugs ~~and hemodialysis and peritoneal dialysis equipment and supplies~~ for use in their professional practice *exempt from the tax as provided in VR 630-10-65* . ~~Controlled drugs are those itemized in Section 54-524.84:1 et seq. of the Virginia Code.~~

Physicians, surgeons, other practitioners of the healing arts, and profit and nonprofit medical facilities and individuals may purchase the following items exempt from the tax: (i) nonprescription drugs and proprietary medicines, as defined in VR 630-10-65, and (ii) hemodialysis and peritoneal dialysis equipment, supplies and drugs for use in the actual treatment of patients. For additional information on controlled drugs and medicines and drugs generally, and equipment, supplies and drugs used in hemodialysis and peritoneal dialysis, see VR 630-10-65 and VR 630-10-64.1, respectively.

Purchases of tangible personal property for subsequent resale by a practitioner may be made exempt from the tax under a certificate of exemption, Form ST-10.

C. Purchases by a licensed physician of wheelchairs, braces, crutches, prostheses, orthopedic appliances, durable medical equipment, and similar items are subject to the tax, unless purchased on behalf of a specific patient. Other purchases, including bulk purchases of such items, are subject to the tax, even if items from a bulk inventory are subsequently dispensed to or modified for specific patients. *For further information on purchases of medical equipment, see VR 630-10-64.1.*

~~For medicines, drugs, durable medical equipment, and dialysis equipment see § 630 10 65. Section revised 1/79; 1/85.~~

VA.R. Doc. No. R94-131; Filed October 26, 1993, 10:32 a.m.

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Title of Regulation: **VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances – Visual and Audio.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Furthermore, it reviews the regulations to determine whether certain regulations dealing with similar matters should be consolidated and whether those dealing with numerous matters should be divided into separate regulations. It was determined that a separate regulation is appropriate in this instance.

Purpose: This regulation clarifies the application of the retail sales and use tax to sales of eyeglasses, contact lenses, hearing aids, and related supplies. It also includes one legislative change.

Substance: This regulation clarifies that contact lenses, eyeglasses and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, optometrists, audiologists, or hearing aid dealers and fitters are exempt from the tax. It explains that the above items when purchased without a prescription or work order are taxable. It also explains the tax responsibilities of persons engaged in the retail sale of contact lenses, eyeglasses, hearing aids, and related optical and audiological items. Finally, it points out the exemption available for nonprescription drugs and proprietary medicines.

This regulation was previously part of VR 630-10-65 relating to medicines and drugs.

Issues: Regulatory provisions should be reviewed periodically to ensure they reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to purchases and sales of contact lenses, glasses, hearing aids, and other optical and audiological items. It also reflects a legislative change effective July 1, 1994.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in adopting the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include ophthalmologists, optometrists, audiologists, and hearing aid dealers and fitters. Since this regulation is intended to publicize current policy and one legislative change, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation.

Summary:

This regulation clarifies the application of the retail sales and use tax to sales of glasses, contact lenses, and other optical supplies, and hearing aids and related supplies. The provisions of this regulation were previously set forth in VR 630-10-65 relating to medicines and drugs.

VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances – Visual and Audio.

PART I.
GENERAL PROVISIONS.

§ 1.1. Generally.

The tax does not apply to contact lenses, eyeglasses and hearing aids dispensed by or sold on prescriptions or work orders of licensed physicians, optometrists, audiologists, hearing aid dealers and fitters or ophthalmologists.

Purchases of the above by a dealer for filling prescriptions may be made exempt from the tax under a Certificate of Exemption, Form ST-10. Sales to licensed physicians, optometrists, audiologists, hearing aid dealers and fitters and ophthalmologists of furnishings, equipment, and supplies for use in their practices are taxable. For additional information on licensed physicians, see VR 630-10-83.

PART II.
SALES TO CONSUMERS.

§ 2.1. Sales to consumers generally.

Sales of eyeglasses, contact lenses, and hearing aids on the prescriptions or work orders of licensed physicians, ophthalmologists, optometrists, audiologists, or hearing aid dealers and fitters and certain other ophthalmic and audiological supplies to consumers are exempt from the tax. However, eyeglasses and other sight and hearing related appliances not on prescription or work order or related supplies are taxable.

§ 2.2. Eyeglasses, contact lenses, and other ophthalmic aids and supplies, specifically; exempt sales; taxable sales.

A. Exempt items include, but are not limited to, the following:

1. Eyeglasses ground on prescription of licensed physicians, ophthalmologists or optometrists, including the frames as an integral part;

2. Eyeglass frames and repair parts sold in connection with the repair or replacement of eyeglasses ground on prescription of licensed physicians, ophthalmologists or optometrists, provided the prescription for the glasses is on file with the person replacing or repairing the frames;

3. Contact lenses issued pursuant to prescription; or

4. Specific items such as telescopes, binoculars, and other similar items when sold pursuant to a prescription or work order to the visually handicapped to take the place of or enhance eyeglasses.

B. Taxable items include, but are not limited to, the following:

1. Eyeglasses, contact lenses, and other optical goods not prescribed by licensed optometrists or ophthalmologists;

2. Eyeglass frames not in connection with the sales of eyeglasses ground on prescription, or the repair or replacement of such eyeglasses;

3. Sunglasses not prescribed by a licensed physician, ophthalmologist or optometrist;

4. Solutions for cleaning eyeglasses and contact lenses;

5. Eyeglass cases not in connection with the sale of eyeglasses; and

6. Barometers, telescopes, binoculars, opera glasses and similar items, generally.

§ 2.3. Hearing aids and related supplies, specifically; exempt sales; taxable sales.

A. Exempt items include, but are not limited to, the following:

1. Hearing aids pursuant to a prescription or work order of a licensed physician, audiologist, hearing aid dealer or fitter;

2. Hearing aid repair parts and replacement batteries, provided the prescription for the hearing aid is on file with the person replacing the battery or repairing the hearing aid; and

3. Nonprescription drugs, as defined in VR 630-10-65.

B. Taxable items include, but are not limited to, the following:

1. Hearing aids not prescribed or issued on work order of a licensed physician, audiologist, hearing aid dealer or fitter;

2. Hearing aid batteries not in connection with a hearing aid for which a dealer has a prescription on file; and

3. Ear plugs and other ear accessories.

§ 2.4. Dealer requirements.

All persons, including opticians, optometrists, ophthalmologists, audiologists, hearing aid dealers and fitters, and licensed physicians making taxable sales are required to register as dealers and collect and remit the tax due.

PART III.
SALES TO DEALERS.

§ 3.1. Exempt sales.

Eyeglass frames, contact lenses, optical merchandise and optical supplies, hearing aids, batteries and other ear related items to dealers, including optometrists, audiologists, hearing aid dealers and fitters and licensed physicians, for resale are not subject to the tax until sold at retail by such purchasers, at which time the rules set forth in this regulation apply.

§ 3.2. Taxable sales.

Instruments and supplies sold to physicians, ophthalmologists, optometrists, audiologists, hearing aid dealers and fitters, and other users for use in their practices are taxable.

§ 3.3. Withdrawals from inventory.

Dealers are required to remit the use tax to the department on merchandise and supplies such as cleaning solutions withdrawn from a resale inventory and provided at no additional cost to purchasers of eyeglasses, contact lens or hearing aids for their own use. See VR 630-10-32 for a further explanation of this requirement.

VA.R. Doc. No. R94-130; Filed October 26, 1993, 10:34 a.m.

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Title of Regulation: **VR 630-10-92. Retail Sales and Use Tax: Research.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, and was not reflective of current policy, it is being revised.

Purpose: This proposed regulation clarifies the sales and use tax treatment of sales and purchase transactions made in performing basic research and research and development (both of which, hereafter, will be referred to as "research").

Substance: This proposed regulation clarifies the current policy on research. However, additional policy was added in this regulation to allow a person to make de minimus usage of exempt research equipment without losing the research exemption if certain criteria are met.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This proposed regulation clarifies the department's current policy with respect to research.

Estimated Impact:

A. Projected Cost to Agency: The Department of Taxation has incurred administrative cost in revising this regulation. Implementing the regulation will involve additional cost to print and mail the regulations to the affected entities. However, the department will minimize mailing cost by distributing this regulation with other regulations. The department has sufficient auditors and technical support staff to enforce this regulation, therefore, additional enforcement cost are not anticipated.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Numbers and Types of Regulated Entities: Entities

subject to the provision of this regulation include research companies; manufacturing; and innovative and high technology companies. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulation Entities: It is anticipated that the regulated entities will incur no additional cost because of this regulation revision.

Summary:

This proposed regulation clarifies the current policy on research. However, additional policy was added in this regulation to allow a person to make deminimus usage of exempt research equipment without losing the research exemption if certain criteria are met.

VR 630-10-92. Retail Sales and Use Tax: Research.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Basic research" means a systematic study or search in a scientific or technical field of endeavor with the ultimate goal of advancing knowledge or technology in that field. The development of a tangible product or process need not occur in basic research activities. Examples of basic research activities include medical, chemical, or biological experiments conducted in a laboratory environment.

"Direct use" means those activities which are an integral part of basic research or research and development activities, including all steps of these activities, but not including secondary activities such as administration, general maintenance, product marketing, and other activities collateral to the actual research process.

"Exclusive use" means items are used solely in basic research and research and development activities.

"Experimental sense" means work is conducted through tests, trials, tentative procedures, or policies adopted under controlled conditions to discover, confirm, or disprove something doubtful.

"Laboratory sense" means work is conducted in a place equipped for experimental study in a science and providing an opportunity for experimentation, observation, or practice in a field of basic scientific or traditional physical science research.

"Research" means basic research and research and development as defined in this section.

"Research and development" means a systematic study or search directed toward new knowledge or new understanding of a particular scientific or technical subject and the gradual transformation of this new knowledge or new understanding into a usable product or process. Research and development must have as its ultimate goal: (i) the development of new products; (ii) the improvement of existing products; or (iii) the development of new uses for existing products. Research and development does not include the modification of a product merely to meet customer specifications unless the modification is carried out under experimental or laboratory conditions in order to improve the product generally or develop a new use for the product.

~~A.~~ *§ 1.2.* Generally.

The tax does not apply to tangible personal property purchased or leased and used directly and exclusively ~~in basic~~ *for* research in the experimental or laboratory sense ~~or research and development in the experimental or laboratory sense~~ .

~~Basic research and research and development do~~ *Research does* not include testing or inspection of materials or products for quality control; however, in the case of an industrial manufacturer, processor, refiner or converter, ~~this~~ *testing and inspection for quality control* is deemed to be an exempt activity under *§ VR* 630-10-63. Additionally, ~~basic research and~~ research ~~and development do~~ *does* not include environmental analysis, testing of samples for chemical or other content, operations research, feasibility studies, efficiency surveys, management studies, consumer surveys, economic surveys, research in the social sciences, metaphysical studies, advertising, promotions, or research in connection with literary, historical, or similar projects.

~~B. Basic research defined. "Basic research" is a systematic study or search in a scientific or technical field of endeavor with the ultimate goal of advancing knowledge or technology in that field. Basic research in the experimental or laboratory sense is such research that is carried on in a laboratory environment or by experimental methods.~~

~~The development of a tangible product or process need not be involved in basic research activities. Examples of such exempt research activities include medical, chemical or biological research experiments conducted in a laboratory environment.~~

~~C. Research and development defined. "Research and development" is a systematic study or search directed toward new knowledge or new understanding of a particular scientific or technical subject and the gradual transformation of such new knowledge or new understanding into a usable product or process. Research~~

~~and development in the experimental or laboratory sense should have as its ultimate goal: (1) the development of new products; (2) the improvement of existing products; or (3) the development of new uses for existing products. Research and development in the experimental or laboratory sense is such research that is carried on in a laboratory environment or by experimental methods. Research and development does not include the modification of a product merely to meet customer specifications unless such modification is carried out under experimental or laboratory conditions in order to improve the product generally or develop a new use for the product.~~

~~D. Direct and exclusive use defined. The term "used directly" refers to those activities which are an integral part of basic research or research and development activities, including all steps of such processes, but not including secondary activities such as administration, general maintenance, product marketing and other activities collateral to the actual research process. The term "used exclusively" refers to items used solely in exempt research activities.~~

PART II.
EXTENT OF THE EXEMPTION.

§ 2.1. Direct and exclusive use.

The exemption is limited in scope to tangible personal property used directly and exclusively in an actual research process, starting with the handling and storage of raw materials and supplies at the research facility and ending after the last step of the research process when the products of the research process are stored at the research facility. Items of tangible personal property used directly and exclusively in research include chemicals, drugs and other materials, equipment, machinery, tools, supplies, energy, fuel, and power used in these processes. An item is not considered used directly and exclusively merely because it is essential to research activities or because its use is required by law.

§ 2.2. Items used in both taxable and exempt research activities.

~~Items~~ *When a single item is* used both in exempt and nonexempt activities, ~~are~~ *it is* not used exclusively in research activities and ~~are subject to the tax~~ *is taxable* . Therefore, a prorated research exemption *of the single item* based upon percentages of exempt and nonexempt usage or an exemption based upon the preponderance of an item's use in exempt activities is not permitted ~~under this section~~ .

Example: A company purchases a computer system which is used 90% of the time for research purposes. The remaining 10% of the time, the computer was used to maintain a general ledger and generate monthly financial statements. The computer system is taxable on the full purchase price.

§ 2.3. De minimus usage.

When research property is used in a taxable manner, it will continue to be exempt from the tax if the taxable use is de minimus in nature. Taxable use of the property is considered de minimus if the taxable usage of the property (i) does not involve a continuous or ongoing operation; (ii) does not follow a consistent pattern, i.e., weekly, monthly, quarterly, etc.; (iii) is occasional in nature occurring no more than three times; and (iv) in total, accounts for no more than three days.

Example 1. A company purchases a computer system which it uses directly for research. However, a management report is generated which addresses the progress of the research projects. It takes two days to generate the report. No other taxable usage was made of the computer. Although the generation of management reports is typically a taxable usage of research equipment, this use of the computer to generate management reports is considered de minimus as it is not a continuous operation, it occurred one time, and took less than three days to complete. Therefore, the computer system is considered exclusively used in research and will be exempt from the tax.

Example 2. Facts are the same as Example 1, except that instead of generating an annual management report, the computer is used to generate weekly payroll and employment tax return reports, which consumes 2.0% of the computer's time. The generation of payroll and employment reports is not a de minimus taxable usage of the computer as the reports is consistently generated. Therefore, the computer is not considered used exclusively for research and is taxable.

§ 2.4. Item changed from exempt to taxable use.

When tangible personal property is purchased exempt of the tax for direct and exclusive use in research and is subsequently used in a manner other than that which would retain the exemption, the tax must be remitted directly to the department using Consumer Use Tax Return, Form ST-7 based on the purchase price of the property. However, if the taxable use of the property is made more than six months after the date it was purchased, the tax may be computed on the lower of purchase price or fair market value at the time the taxable use was made. The burden of proof is on the person to substantiate the fair market value of the property.

§ 2.5. Equipment purchased or leased for use by other companies.

~~An item is not used directly and exclusively merely because it is essential to research activities or because its use is required by law. Additionally, tangible~~ *Tangible* personal property ~~shall~~ *must* be purchased or leased by

the person, firm, corporation, or other entity that actually will perform research activities in order to qualify for the tax exemption for items used directly and exclusively in ~~basic~~ research ~~or research and development~~ . *If the research equipment is purchased or leased by a person and is subsequently donated or loaned to another person to perform research for either party, the equipment is taxable to the person making the purchase, even if the other party is a nonprofit organization, governmental entity, or is otherwise exempt from the sales and use tax.*

Example: A company hires an institution to conduct research on its behalf. The company purchases research equipment which it donates to the institution to conduct the research. The company is taxable on the purchase price of the equipment because it is not actually conducting the research activities.

~~E. Experimental and laboratory defined.~~

~~1. "Experimental" means a test or trial, a tentative procedure or policy adopted under controlled conditions to discover, confirm or disprove something doubtful.~~

~~2. "Laboratory" means a place equipped for experimental study in a science and providing an opportunity for experimentation, observation or practice in a field of basic scientific or traditional physical science research.~~

~~F. Extent of exemption. The exemption is limited in scope to those items used directly and exclusively in an actual research process, starting with the handling and storage of raw materials at the research facility and ending after the last step of the basic research or research and development process when the products of the research process are stored at the research facility. Items of tangible personal property used directly and exclusively in basic research or research and development include materials worked on, equipment, machinery, tools, supplies, energy, fuel, and power used in such processes.~~

PART III.
TAXABLE AND EXEMPT ITEMS.

~~C.~~ *§ 3.1.* Taxable and exempt items.

Following are examples of taxable and exempt items used in research activities. These lists are exemplary and are not intended to be all inclusive.

1. Taxable:

a. Desks, chairs, copy machines, calculators, file cabinets, typewriters, etc., used by *administrative* clerical personnel in support of research activities;

b. Desks, chairs, copy machines, file cabinets, *work benches, storage cabinets used to store research equipment, tools, and supplies,* etc., used by research personnel;

c. Heating and cooling equipment used to maintain an optimum temperature in a research facility when also used for general heating and cooling purposes;

d. Items used in the publication of research findings;

e. Items used in marketing new products resulting from research ~~and development~~ ;

f. Computer hardware and taxable *prewritten or modified* software when used for administrative and other activities collateral to actual research activities;

g. Equipment and supplies for cleaning or sterilizing items used directly in research activities either before or after ~~such~~ *these* activities;

h. Equipment and supplies used to produce items that will be used directly in research activities;

i. Technical books and journals purchased by a research facility for general reference and training purposes, or to keep research personnel informed of current scientific advancements, achievements, or events, and not purchased in connection with specific research activities.

2. Exempt *when used directly and exclusively in research* :

a. Test tubes, flasks, reagents, microscopes, ~~and~~ slides , *and similar items* ~~when used in a research facility~~ ;

b. Electronic instrumentation and components, ~~Laboratory~~ *laboratory* tables *and equipment, tools, and similar items* ~~used in a research facility~~ ;

c. Technical books and journals purchased by a research facility for use in performing background research *for a specific research project* ;

d. Paper and supplies used to record research findings during the actual research process;

e. Computer hardware and ~~taxable~~ software when used exclusively to store, retrieve, and process research data;

f. Protective clothing provided gratuitously to employees engaged in research activities;

g. Items used to transport or store research materials during and between various steps of research *at the research facility* ~~when used exclusively for such purposes~~ ;

h. Heating and cooling equipment ~~when~~ used ~~exclusively~~ to maintain the integrity of research materials;

i. Repair parts for new equipment used during the field testing stage of research ~~and development~~ activities; and

j. Drugs, chemicals, animals, and other raw materials, including the cabinets, shelves, or cages in which these items are stored.

PART IV.
CONTRACTORS.

§ 4.1. Contractors.

Generally, a contractor is the user and consumer of all tangible personal property furnished to or by him in connection with real property construction, reconstruction, installation, repair, and similar contracts as provided in VR 630-10-27. However, tangible personal property furnished to or by the contractor which will be used directly and exclusively in research is exempt from the tax. The contractor may purchase this property exempt of the tax by furnishing to the vendor a properly executed exemption certificate, Form ST-11A.

PART V.
EXEMPTION CERTIFICATES.

§ 5.1. Use of exemption certificates.

In making purchases for use in research, a person should furnish suppliers with a certificate of exemption, Form ST-11. However, these certificates should not be used in making purchases of items which are not directly and exclusively used in research. If the business gives a certificate of exemption and then uses some of the property purchased for purposes other than research, the business must remit the tax to the department as provided in § 2.4 of this regulation.

~~Section revised 7/69; 1/79; 1/85.~~

VA.R. Doc. No. R94-129; Filed October 26, 1993, 10:36 a.m.

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Title of Regulation: **VR 630-10-97.1. Retail Sales and Use Tax: Services.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985 and needed clarification and examples of current policy, it is being revised.

Purpose: This regulation clarifies the application of the retail sales and use tax to sales of services.

Substance: This regulation clarifies the application of the retail sales and use tax to sales of services. Generally, services are exempt from the tax; however, certain services, such as those in connection with the sale of tangible personal property are taxable. Numerous examples are provided to illustrate the tax treatment of transactions involving both the provision of tangible personal property and the rendition of services as determined using the "true object" test as explained therein. The taxability of information services and the tax responsibilities of service providers are also clarified.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to sales of service transactions and transactions involving both the provision of tangible personal property and the rendition of services.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include providers of services. Since this regulation is intended to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation.

Summary:

This regulation clarifies the application of the retail

sales and use tax to sales of services. Generally, services are exempt from the tax; however, certain services, such as those in connection with the sale of tangible personal property are taxable. Numerous examples are provided to illustrate the tax treatment of transactions involving both the provision of tangible personal property and the rendition of services as determined using the "true object" test as explained therein. The taxability of information services and the tax responsibilities of service providers are also clarified.

VR 630-10-97.1. Retail Sales and Use Tax: Services.

§ 1. Generally.

Charges for services generally are exempt from the retail sales and use tax. However, services provided in connection with sales of tangible personal property are taxable.

Transactions involving both the sale of tangible personal property and the provision of services, generally are either taxable or exempt on the full amount charged, regardless of whether the charges for the service and property components are separately stated. As explained in § 4 of this regulation, the "true object" test is used to determine the taxability of these transactions.

~~A.~~ *§ 2.* Taxable services.

~~The tax does apply to charges~~ *Charges* made for the following *are taxable* :

~~(1) any~~ *1. Any* services included in or in connection with the sale of tangible personal property;

~~(2)~~ *2. Any services in connection with* the fabrication of tangible personal property ~~for consumers who furnish~~ *whether or not the customer furnishes* , either directly or indirectly, the materials used in fabrication (see ~~also~~ § *VR* 630-10-37);

~~(3)~~ *3. Any services in connection with* the furnishing, preparing, or serving by a person for a consideration of meals or other tangible personal property ~~consumed on his property~~ *(see VR 630-10-64)* ; and

~~(4) any~~ *4. Any* rooms, lodgings or accommodations furnished to transients by any hotel, motel, inn, tourist camp or cabin, camping grounds, club or any other similar place furnished for less than 90 continuous days (see ~~also~~ § *VR* 630-10-48).

~~B. Nontaxable~~ *§ 3. Exempt* services.

~~The tax does not apply to charges made for the following~~ *The following are not subject to the tax* :

~~(a) personal~~ *1. Personal* , professional, or insurance transactions which involve sales as inconsequential elements for which no separate charge is made;

~~(b) separately~~ *2. Separately* stated services performed by repairmen *(see VR 630-10-90)* ;

~~(c) separately~~ *3. Separately* stated labor or service charges for the repair, installation, application or remodeling of tangible personal property; ~~and~~

~~(d) separately~~ *4. Separately* stated transportation charges (see ~~also~~ § *VR* 630-10-107) ;

5. Separately stated charges for alterations to apparel, clothing and garments (see VR 630-10-8.1);

6. Charges for gift wrapping services performed by a nonprofit organization;

7. An amount separately charged for labor or services rendered in connection with the modification of prewritten programs as defined in § 58.1-602 of the Code of Virginia (see VR 630-10-49.2); and

8. Computer programs that meet the requirements of "custom programs" as defined in § 58.1-602 of the Code of Virginia (see VR 630-10-49.2).

~~2. Service vs. sale~~ *§ 4. Determination of the appropriate tax treatment of service and sale transactions; information services .*

A. In order to determine whether a particular transaction which involves both the rendering of a service and the provision of tangible personal property constitutes an exempt service or a taxable retail sale, the "true object" of the transaction must be examined. If the object of the transaction is to secure a service and the tangible personal property which is transferred to the customer is not critical to the transaction, then the transaction may constitute an exempt service. However, if the object of the transaction is to secure the property which it produces, then the entire charge, including *the charge for any* services provided, ~~will be~~ *is* taxable. ~~For example, the object of a transaction which includes the electronic transmittal of current stock market quotations via a terminal is deemed to be a service since the object of the transaction is to obtain the service of electronic information transmittal and the tangible personal property included serves only as the medium for securing the service.~~

~~Conversely, if~~ *Example of a taxable transaction. If* one commissions an artist to paint a portrait, the entire transaction is deemed to be a taxable sale despite the fact that a considerable amount of the charge represents the artist's labor, since the object is to obtain the finished product. ~~Section revised 11/85.~~

Example of an exempt service transaction. Charges for training programs which include charges for required workbooks and tapes are exempt from the

tax as charges for services since the object is to obtain the training services. However, separately stated charges for workbooks and tapes are subject to the tax.

In instances where both the services rendered and the property transferred are critical elements of a transaction, the degree of customization, uniqueness or specific services provided in connection with the product shall be considered in determining its appropriate tax status. The following are examples of transactions in which the tax status is based on these factors:

1. Taxable

a. Standard data lists, reports

b. Extra copies of reports, letters

c. Equipment rentals

d. Data communications equipment

2. Exempt

a. Customized data lists, reports

b. Original letters, reports

c. Equipment rentals with operators

d. Data communications services, including equipment

The object of the exempt transactions is to obtain a service from the seller. However, the object of the taxable transaction is to obtain the tangible personal property provided by the seller since no special or customized services are involved in providing the tangible property.

B. The object of any transaction which includes the transmittal of information through electronic means (e.g., current stock market quotations via a terminal) is deemed to be a service since the object of the transaction is to obtain the service of electronic information transmittal and the tangible personal property included serves only as the medium for securing the service. However, the sale or lease of tangible personal property which transmits or receives electronic information not in connection with the provision of information services are taxable.

Example. A taxpayer provides information retrieval services and in connection therewith leases or rents computer equipment to its customers. Charges for the retrieval service, which include charges for the lease or rental of the equipment, are exempt from the tax. However, if the taxpayer leases or sells computer equipment to customers without the provision of the information services, such lease or sale is taxable.

Information conveyed via tangible means (e.g., diskette, computer tape, report, etc.) generally is taxable except for information customized to a particular customer's needs and sold to that particular customer.

§ 5. Tax responsibilities.

A service provider is the taxable user and consumer of all tangible personal property purchased for use in providing exempt services. If a supplier fails to collect the tax from a service provider, the provider shall remit use tax to the department as provided in VR 630-10-109.

Any service provider who also makes retail sales of tangible personal property must register as a dealer with the department and collect and remit the tax on its sales.

Example of service provider making retail sales. A person engaged in transmitting and receiving facsimile documents for a fee is deemed to be providing a nontaxable service. However, if he charges a fee for copies of a faxed document, such charges are taxable.

When making bulk purchases of items, some of which will be used in providing services and some of which will be used in making retail sales, a person may purchase all such items exempt from the tax using a certificate of exemption, Form ST-10. The person shall remit use tax to the department on any tangible personal property purchased for resale but used in providing exempt services based on the cost price of the items used.

VA.R. Doc. No. R94-128; Filed October 26, 1993, 10:37 a.m.

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Title of Regulation: **VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985 and was not reflective of current policy, it is being revised.

Purpose: This regulation clarifies the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion and repair, in order to provide guidance to the private sector as well as department personnel.

Substance: The regulation clarifies several terms previously undefined in the regulation, such as foreign and interstate commerce, the high seas, intercoastal trade, etc. It explains what types of vessels are and are not eligible for the exemption. For example, vessels which are used exclusively or more than 50% of the time in interstate or foreign commerce, as well as the repairs to such, are exempt from the tax. In addition, dredges and attendant vessels used more than 50% of the time in dredging interstate waterways, are entitled to the exemption. However, vessels not engaged in interstate and foreign commerce, such as those not physically involved in the dredging of an interstate waterway are taxable.

The regulation clarifies the exemptions available to those engaged in shipbuilding, repair, and conversion. Fuel used for propulsion of ships and vessels generally is exempt from the tax. In addition, fuels used to operate equipment not an integral part of and supplies purchased for use on ships and vessels which ply the high seas in intercoastal trade or foreign commerce are also exempt. However, fuels used to operate equipment on vessels which do not ply the high seas, such as dredges or barges, are taxable.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This regulation clarifies the department's current policy with respect to ships and vessels used or to be used exclusively or principally in interstate or foreign commerce.

Estimated Impact:

A. Projected Cost to Agency: In implementing this regulation the Department of Taxation has incurred minimal administrative costs in revising the regulation and will incur additional costs for printing and mailing the regulation to the affected entities. However, it will attempt to minimize printing and mailing costs by printing and distributing this regulation with other regulations. Enforcement of the regulatory provisions will be achieved with the current staff of auditors and thus no additional enforcement costs will be incurred.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Number and Types of Regulated Entities: Entities subject to the provisions of this regulation include persons engaged in the shipbuilding, conversion, and repair businesses and those engaged in waterborne commerce. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulated Entities: It is anticipated that the regulated entities will incur no additional costs because of this regulation revision.

Summary:

The regulation has been revised to clarify the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion, and repair. It explains what types of vessels are and are not eligible for the exemption. For example, vessels which are used exclusively or more than 50% of the time in interstate or foreign commerce, as well as the repairs to such, are exempt from the tax. In addition, dredges and attendant vessels used more than 50% of the time in dredging interstate waterways, are entitled to the exemption. However, vessels not engaged in interstate and foreign commerce, such as those not physically involved in the dredging of an interstate waterway, are taxable.

The regulation clarifies the exemptions available to those engaged in shipbuilding, conversion, and repair. Fuel used for propulsion of ships and vessels generally is exempt from the tax. In addition, fuels used to operate equipment not an integral part of and supplies purchased for use on ships and vessels which ply the high seas in intercoastal trade or foreign commerce are also exempt. However, fuels used to operate equipment on vessels which do not ply the high seas, such as dredges or barges, are taxable.

VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.

§ 1. Definitions.

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

"Foreign commerce" means a business venture between persons in the United States and those in a foreign country.

"High seas" means that portion of the ocean which is beyond the territorial jurisdiction of the United States. It does not include the Chesapeake Bay, intercoastal waterways, or inland rivers or waterways.

"Intercoastal trade" means the exchange of goods or commodities between ports.

"Interstate commerce" means a business venture between the people of two states.

"Principally" means more than 50%.

"Used directly" means those items that are both indispensable to the building, conversion, or repair process and which are used as an immediate part of such process. See VR 630-10-63 for further explanation of this term.

§ 2. Ships and vessels used in interstate or foreign

commerce; dredges and attendant vessels.

~~The tax does not apply to ships~~ *A. Ships* or vessels used or to be used exclusively or principally in interstate or foreign commerce or ~~to~~ *the charge for* repairs and alterations of them *are exempt from the tax* . ~~The tax does not apply to fuel and supplies for use or consumption aboard ships or vessels plying the high seas, either in intercoastal trade between ports in this state and ports in other states of the United States or its territories or possessions; or in foreign commerce between ports in this state and ports in foreign countries when delivered directly to such ships or vessels.~~ *Ships or vessels which are not principally used in interstate or foreign commerce are subject to the tax. This includes charter party boats, fishing vessels, and other vessels which leave a point in one state and return to the same point without docking in another state.*

B. Dredges and attendant vessels, such as barges upon which silt from the dredging process is loaded, are entitled to the exemption set forth in this section and § 3 provided they are principally used in the dredging of interstate waterways. Vessels not physically involved in the dredging of an interstate waterway, such as crew boats, survey boats, and barges used to move equipment, materials, and employees from the dredging site, are subject to the tax.

§ 3. Shipbuilding, conversion, and repair.

~~The tax does not apply to tangible~~ *Tangible* personal property used directly in the building, conversion, or repair of ~~such~~ ships or vessels *(i) used or to be used exclusively or principally in interstate or foreign commerce, or (ii) plying the high seas, either in intercoastal trade between ports in the Commonwealth and ports in other states of the United States, its territories or possessions, or in foreign commerce between ports in the Commonwealth and ports in foreign countries, is exempt from the tax. Persons engaged in the building, conversion, or repair of such ships or vessels may be eligible for the manufacturing exemption set forth in VR 630-10-63. Items of tangible personal property which are used directly in the building, conversion, or repair process, such as machinery, tools, fuel, power, energy, and supplies, may be purchased exempt from the tax. Items of tangible personal property used indirectly in shipbuilding, conversion, or repair activities are subject to the tax. For example, tangible personal property purchased for use in providing shipboard or support services, including, but not limited to crew berthing, and power, water, steam, and refrigeration services for the crew's facilities, in connection with the repair of vessels, is deemed to be used indirectly in the process and subject to the tax.*

See VR 630-10-63 for further description of the manufacturing/processing exemption.

For repairs to ships or vessels not meeting the interstate or foreign commerce or plying the high seas requirements, see VR 630-10-90.

§ 4. Fuel and supplies; vessels and ships plying the high seas.

A. Fuel used for propulsion of ships or vessels, including dredges, are exempt from the tax pursuant to subdivision 6 of § 58.1-609.1 of the Code of Virginia. However, except as provided in this section, fuel used to operate equipment which is not an integral part of a ship, boat, or vessel, generally is taxable.

B. Fuel for the propulsion or operation of equipment and supplies for use aboard ships or vessels plying the high seas, either (i) in intercoastal trade between ports in this state and ports in other states of the United States or its territories or possessions, or (ii) in foreign commerce between Virginia ports in this state and ports in foreign countries is exempt from the tax when delivered directly to such ships or vessels.

Fuel used to operate machinery and equipment which is not an integral part of and supplies purchased for use on ships or vessels which do not ply the high seas in intercoastal trade or foreign commerce, such as dredges or barges, is taxable. When fuel is used in both taxable and exempt activities, the tax due is prorated between the percentage of use in taxable and exempt activities. For example, fuel used in engines to both propel a dredge and to operate equipment on such is taxable based upon the percentage of usage in operating the equipment.

~~The foregoing exemptions are restricted to the ships and vessels described and do not extend to other ships, vessels, boats or other watercraft. For manufacturers, processors, etc., in general see § 630-10-63; for contractors see § 630-10-27. Section revised 1/79; 1/85.~~

VA.R. Doc. No. R94-127; Filed October 26, 1993, 10:38 a.m.

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Title of Regulation: **VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.**

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public Hearing Date: January 10, 1994 - 10 a.m.
Written comments may be submitted through January 14, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under the authority granted by § 58.1-203 of the Code of Virginia.

The department periodically reviews and revises regulations to reflect current policy and practice. Since this regulation has not been revised since January 1985, and was not reflective of current policy, it is being revised.

Purpose: This proposed regulation clarifies the sales and use tax treatment of sales and purchase transactions made in typesetting operations.

Substance: This proposed regulation adds a definition for electronic prepress operations; clarifies that typesetting and electronic prepress operations qualify for the industrial manufacturing exemption if the printers, for whom the work is done, are also industrial manufacturers; and it sets forth examples of exempt typesetting and electronic prepress materials, machinery, tools, and equipment.

Issues: Regulatory provisions should be revised periodically to reflect current policy with respect to issues. This proposed regulation clarifies the department's current policy with respect to typesetting.

Estimated Impact:

A. Projected Cost to Agency: The Department of Taxation has incurred administrative cost in revising this regulation. Implementing the regulation will involve additional cost to print and mail the regulations to the affected entities. However, the department will minimize mailing cost by distributing this regulation with other regulations. The department has sufficient auditors and technical support staff to enforce this regulation, therefore, additional enforcement cost are not anticipated.

B. Source of Funds: The administrative expenses incurred by the Department of Taxation will be deducted from general operating revenues.

C. Numbers and Types of Regulated Entities: Entities subject to the provision of this regulation include typesetters; printers; trade houses, which provide electronic prepress services; advertising businesses; and publishing companies. Since the purpose of this regulation is to publicize current policy, it is anticipated that the proposed regulation will have minimal impact on the regulated entities.

D. Projected Cost to Regulation Entities: It is anticipated that the regulated entities will incur no additional cost because of this regulation revision.

Summary:

This proposed regulation adds a definition for electronic prepress operations; clarifies that typesetting and electronic prepress operations qualify for the industrial manufacturing exemption if the printers, for whom the work is done, are also industrial manufacturers; and sets forth examples of exempt typesetting and electronic prepress materials, machinery, tools, and equipment.

VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.

§ 1. Definitions.

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

"Electronic prepress" means any process involved in taking manuscript, conventionally supplied artwork, electronically supplied artwork, electronically supplied keystrokes, and other client materials and formatting these materials into electronic commands so that they can be output as film or paper to image-setting output devices or prepared in such a way that they can be distributed electronically by way of any electronic or magnetic media. It also includes the various proofing steps that are required prior to final output or distribution by way of any electronic or magnetic media.

"Typesetting" means the process by which specialized equipment is used to accept front-end commands and to transform them into text characters according to the font, type size, and other instructions of a composition system and includes electronic prepress, as defined in this section.

~~A.~~ *§ 2.* Generally.

Persons engaged in *providing* typesetting *products* for sale or resale *to printers which qualify for the industrial manufacturing exemption as set forth in subdivision 2 of § 58.1-609.3 of the Code of Virginia* are *also considered* industrial manufacturers ~~under the Virginia Retail Sales and Use Tax Act~~ , regardless of whether finished products are produced by hand composition, machine composition, photocomposition, ~~or~~ typographic composition , *or electronic page composition* .

~~B.~~ *§ 3.* Sales.

The sale of typesetting products is the sale of tangible personal property. The tax is computed upon the total charge for typesetting, including any charges for services connected with the sale. All typesetting operations must register as dealers ~~and~~ . *In addition, they must* collect *the tax from their customers,* and remit the ~~sales~~ tax *to the department unless the customer furnishes a valid exemption certificate, as provided in VR 630-10-20* § ~~630-10-86 is applicable to purchases of typesetting products by printers~~ .

~~C.~~ *§ 4.* Purchases ~~by typesetters~~ .

~~§ 630-10-63, on manufacturing applies to purchases~~ *Typesetters, as industrial manufacturers, are exempt from taxation on the purchase* of industrial materials, machinery, tools, *equipment,* and other items of tangible personal property ~~by typesetters~~ *that are used primarily and directly in the production of typesetting products to be sold or resold to printers qualifying for the industrial manufacturing exemption . Examples of exempt typesetting materials, machinery, and equipment include, but are not limited to, the following:*

1. Computer hardware and software;

2. Disk drives;

3. Linotype, monotype, and ludlow machines and their related attachments;

4. Keyboards;

5. Line plates, halftone plates, combination plates, and similar items;

6. On and offline terminals;

7. Optical scanner readers;

8. Paper and magnetic tape readers;

9. Paper stock, film or plating materials on which type or images are set; and

10. Proofing equipment.

§ 5. Word processing.

Word processing, as set forth in VR 630-10-114, used in the production of customized letters, resumes, reports, and similar products (even when produced by a business also engaged in typsetting) is not industrial manufacturing for purposes of the exemption described in § 4.

~~Section added 1/84.~~

VA.R. Doc. No. R94-126; Filed October 26, 1993, 10:41 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **VR 672-40-01. Infectious Waste Management Regulations (REPEALING).**

Title of Regulation: **VR 672-40-01:1. Regulated Medical Waste Management Regulations.**

Statutory Authority: Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Public Hearing Dates: December 14, 1993 - 8 p.m.
December 15, 1993 - 8 p.m.
December 16, 1993 - 8 p.m.
Written comments may be submitted until 5 p.m. January 17, 1994.
(See Calendar of Events section for additional information)

Purpose, Basis and Need: The purpose is to supersede and replace those regulations that establish standards and procedures pertaining to infectious waste management and regulated medical waste management in this Commonwealth. This action is undertaken in order to protect the public health and public safety and to enhance the environment and natural resources. The Virginia Waste Management Board is authorized to supervise and control waste management activities by the Virginia Waste Management Act as set out in Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

Modern medical care produces an increasing amount of waste, and 5.0% to 15% of that waste requires more prudent care because it is potentially infectious, aesthetically unpleasant, sharp, or otherwise a potential problem. Increased difficulty in dealing with this waste led the board to adopt regulations for its management in 1989. The only known options were to not act and allow the situation to worsen or to adopt unenforceable guidelines deemed unlikely to be successful. The implementation of the regulations has been successful, and most of the credit for the success is due to voluntary compliance by the regulated community which brought professional expertise to the effort. Flaws and inflexibilities in the regulations have been uncovered, and the intent of this action is to improve the regulations by correcting the original regulations and adding several options, thresholds, and other items designed to increase the flexibility that the regulations allow the regulated community in solving their waste management problems. The options of revoking the regulations or leaving them unchanged were considered impractical. The need for sound management and board leadership in that management continues, and ignoring the need for improvements in the previous regulations would be unfair to the regulated community. The board intends to review the regulations within two years from their effective date and on a frequency of every two years thereafter. Whenever there is a change in the need for any of the regulations or there is need for improvement, the board intends to take the appropriate action.

Substance and Issues: The Virginia Waste Management Board adopted rules and regulations, titled Infectious Waste Management Regulations, on November 2, 1989. The regulations were entirely new and regulated the management of infectious waste by those who generate, treat, store, transport or dispose of it. These regulations went into effect on May 2, 1990. After administering these regulations for more than two years, several areas were found where the regulations could be improved to effect more efficient, less costly, and simpler management practices and to provide more flexibility in the waste management options available. Many of these improvements were incorporated into amendments to the regulations which were adopted as emergency regulations effective June 30, 1993. The amendments included a change in the name of the regulations to Regulated Medical Waste Regulations. The new regulations continue most of the amendments; however, other improvements are incorporated which resulted from comments received following promulgation of the emergency regulations.

The term *"infectious waste"* was used in 1986 by the U. S. Environmental Protection Agency to describe the 5.0% to 15% of the waste streams from medical facilities that require more prudent care. Since then, the term *"regulated medical waste,"* or very similar terms, has been used in at least three major federal regulations and

many states' regulations. This nomenclature is more appropriate since it may cover waste managed differently for aesthetic or safety reasons, and it does not necessarily imply that the waste has an infectious nature. The emergency amendment and the new regulations substitute *"regulated medical"* for *"infectious"* in all instances.

The original regulations gave a partial exemption from the more intrusive aspects of the regulations to practice in private offices of health care providers and practice in the homes of the patients. Small institutional practices were not eligible for the exemption. The emergency amendment and the new regulations define *"limited small clinics"* to include these small institutional practices and encompass them in the partial exemption.

Permits, in the original regulations, were issued by the formal (review and approve) process or "by rule" (qualify and register). The central office of nurses who provide home health care and similar practitioners could not qualify for a permit by rule. The emergency amendment and the new regulations define *"nonstationary health care provider"* and allow for a collection point serving those providers to qualify for a permit by rule.

The original regulations did not address the subject of reusable containers for management of the waste. The emergency amendment and the new regulations set out standards to require that reusable containers be cleaned and disinfected between uses.

The original regulations allowed only incineration and steam sterilization as treatment methods. Treated waste could be disposed of whole as solid waste; therefore, some items, like hypodermic syringes, could still be picked from the treated waste and used by scavengers. The emergency amendment and the new regulations add small scale heat treatment, microwave treatment and chlorination treatment to the list of approved alternative treatment processes. All non-incineration processes require grinding or shredding of the waste. The new regulations improve the technical standards for these technologies and make them more practical. For example, in the new regulations, small facilities are not required to grind or shred the waste.

In the emergency amendment, a panel was established to review other innovative treatment technologies and recommend action to the director, who could approve variances for the new alternative treatment methods to be used at specific sites. The regulated community feared that the committee could be slow, biased and overly demanding of data. The new regulations eliminate the committee and substitute a standard and protocol for evaluating new technologies.

The emergency amendment and new regulations allow for shipment of waste via the U. S. Postal Service for treatment and disposal. This change was included because there is a great demand for this method among small generators and revised postal rules now adequately address the practice.

Citizens' groups have expressed concerns about the possibility of illegal radioactive materials being received at treatment facilities. Language in the emergency amendment places a requirement on generators to certify that the waste does not contain hazardous or radioactive waste. The new regulations go farther and require facilities to monitor shipments received for radioactivity. If radiation above background is found, the facility owners must notify the USNRC, the Department of Health, the Department of Environmental Quality, and the generator. They must also provide a report to the department about how the incident was resolved.

Cross-referencing of permitting procedures and variance procedures, in which the emergency amendment deleted most similar sections of the original regulations, was not continued in the new regulations. Instead, similar sections were copied into the new regulations from the Solid Waste Management Regulations. The cross-referencing was confusing to the regulated community. By using the procedures of the Solid Waste Management Regulations, instead of the unique procedures of the original regulations, a consistency with solid waste regulatory procedures is achieved without the confusion of cross-referencing.

Impact: The types of entities affected include: medical offices, dental offices, funeral establishments, general hospitals, outpatient surgical hospitals, freestanding outpatient rehabilitation centers, home health agencies, rural health agencies, private psychiatric hospitals, mental health facilities, nursing homes, medical laboratories, renal dialysis centers, portable X-ray facilities, and related or similar facilities. Persons engaged in waste management providing services to these facilities will also be affected. The public and persons with property near waste management facilities handling regulated medical waste will be affected. Approximately, 1,000 medical facilities and 10,000 private offices are most directly affected by the regulations and amendment.

No city, county or town is particularly impacted by the regulations. Urban areas have a higher density of medical facilities and may more often benefit from better waste management at those facilities.

The provision of health care in the home or in private offices and ancillary services for analysis or research are frequently small business enterprises. Many of these businesses are required to follow the regulations in the management of regulated medical waste resultant from their enterprise and, in a few cases, the treatment of the waste. Costs depend on the type and amount of activities they conduct; however, typical costs for a small office with contract services for pickup and disposal of regulated medical waste may be $25 to $50 per week. Many aspects of the regulations attempt to minimize the burden to small generators. Part III contains partial exemptions for offices, home care and small clinics. Treatment requirements and reporting requirements have threshold size criteria for important elements. In that the new regulations supersede

existing regulations, they provide further relief for small business by allowing less costly mail back programs and greater treatment options. A goal in development of the regulations has been to minimize any burden they might impose, especially to small businesses.

Comparison with Federal Requirements: No federal requirements affect the proposal; therefore, the proposal is more stringent than federal requirements. The regulation is being promulgated in the absence of federal requirements because the 1992 General Assembly of Virginia passed legislation to impose a moratorium on the issuance of permits for commercial regulated medical waste incinerators until September 1, 1993. The legislation was proposed in response to health concerns about commercial medical waste incinerators and required the Department to review the need for new or improved regulations controlling them. This legislation was amended by the General Assembly in the 1993 session, and the new version extended the original moratorium for issuance of permits for commercial medical waste incinerators from September 1, 1993, to December 1, 1993; however, the deadline for promulgation of regulations remained September 1, 1993. As a result of the 1993 amendments of the Administrative Process Act, the emergency amendment was adopted effective June 30, 1993. The new regulations will finalize these changes and allow for corrections based on public participation in the rulemaking process.

Summary:

The regulations are constructed in 11 parts. In Part I, the definitions used in the succeeding parts are listed. The statutes and solid waste regulations are cited as supplementing these regulations. Part II states the purpose and authority for the regulations. The relationship to other state and local rules is established. Where there is no mutually exclusive conflict, both regulated medical waste management regulations and the other rules must be obeyed.

Part III is devoted to defining regulated medical waste. A general, descriptive definition of regulated medical waste is combined with a specific list of controlled regulated medical wastes. A list is included of activities that are exempted from all or part of the regulations. A list is included of solid wastes that are specifically excluded from consideration as regulated medical wastes, and a list is included of wastes that are regulated medical wastes but are specifically excluded from requirements of the regulations.

Permits for storage, treatment and disposal of regulated medical wastes are required in Part IV. Qualifying on-site facilities may be considered to have a permit (by rule), without formal application procedures, after their operators make a notification to the director of their identity and conformance to statutory requirements for local government certification and disclosure by key personnel. Detailed rules for packaging the waste are listed. For waste to be transported, additional rules describe boxing and labeling standards. Minimum standards for spill management, reusable container management, financial assurance, record keeping and closure are established. Regulated medical waste must be treated by one of five treatment processes, treated by an approved innovative technology, or disposed of in a sanitary sewer system.

Part V describes requirements for storage facilities, including refrigeration for periods beginning seven days after the date of generation. Part VI describes requirements for transportation. Transporters, other than the U. S. Postal Service, are required to register with the department and to placard vehicles.

Part VII contains operational standards for incineration facilities. Part VIII contains operational standards for steam sterilization facilities. Part IX contains operational standards for alternative treatment facilities.

Part X sets out the procedures for acquiring and holding a permit to store, treat or dispose of regulated medical waste. Ten years is the maximum permit life; however, a renewal process is defined. Existing facilities are relieved of meeting conflicting new standards for six months. Part XI provides procedures for acquiring and holding a special variance from the regulations and for approval of innovative treatment technologies.

VR 672-40-01:1. Regulated Medical Waste Management Regulations.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

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

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

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

"Associated" means two or more firms that share staff members, management, directors, assets or engage in joint ventures. Holding companies and part owners are associated parties.

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

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

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

"Board" means the Virginia Waste Management Board.

"Body fluids" means any liquid emanating or derived from humans or animals and not limited to blood; cerebrospinal, synovial, pleural, peritoneal and pericardial fluids; and semen and vaginal secretions.

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

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

"Commonwealth" means the Commonwealth of Virginia.

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

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

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

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

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

"Department" means the Virginia Department of Environmental Quality.

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

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

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

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

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

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

"Etiologic agents" means organisms defined to be etiologic agents in Title 49 of the U. S. Code of Federal Regulations at § 173.134.

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

"Generator" means any person, by site location, whose act or process produces regulated medical waste identified or listed in Part III of these regulations or whose act first causes a regulated medical waste to become subject to these regulations.

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

171 and 173.

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

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

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

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

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

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

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

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

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

"Owner" means the person who owns a regulated medical waste management facility or part of a regulated medical waste management facility.

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

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

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

"Permit by rule" means provisions of these regulations stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

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

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

"Principal corporate officer" means either:

1. A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy, or decision making function for the corporation, or

2. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

"Principal executive officer" means either:

1. For a federal agency:

a. The chief executive officer of the agency; or

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

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

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

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

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

"Putrescible waste" means regulated medical waste that contains material capable of being decomposed by microorganisms.

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

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

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

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

"Secondary container" means a storage device into which a container can be placed for the purpose of containing any leakage from the original container.

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

"Sharps" means needles, scalpels, knives, glass, syringes, pasteur pipettes and similar items having a point or sharp edge or that are likely to break during transportation and result in a point or sharp edge.

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

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

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

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

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

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

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

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

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

"Transportation" means the movement of regulated medical waste by air, rail, highway, or water.

"Transport vehicle" means any vehicle used for the transportation of cargo.

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

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

"Waste generation" means the act or process of producing a regulated medical waste.

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

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

PART II.
LEGISLATIVE AUTHORITY AND GENERAL INFORMATION.

§ 2.1. Authority for regulations.

These regulations are issued pursuant to the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia (hereinafter Code) which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of that chapter the Virginia Waste Management Act and the federal acts.

§ 2.2. Purpose of regulations.

The purpose of these regulations is to establish standards and procedures pertaining to regulated medical waste management in this Commonwealth in order to protect the public health and public safety, and to enhance the environment and natural resources.

§ 2.3. Administration of regulations.

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

B. The director is authorized to issue orders to require any person to comply with these regulations or to require such steps as he deems necessary to bring about compliance. Orders shall be issued in writing through certified mail and shall be issued in accordance with provisions of applicable law. Nothing contained in these regulations shall be considered to prevent or curtail the director in the exercise of any power granted to that office by statute, executive order, or separate action of the board.

§ 2.4. Applicability of regulations.

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

B. All existing regulated medical waste management facilities, including those under a permit on the effective date of these regulations, must comply with these regulations, except as provided in this section. Existing permits will remain valid, except that conditions or waivers in existing permits that conflict with these amended regulations are void on the date six months from the effective date of these amended regulations.

§ 2.5. Severability.

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

B. These regulations supersede and replace all previous regulations of the Waste Management Board to the extent that those prior regulations conflict with the regulations presented herein. Where there does not exist a conflict between the prior regulations and those presented herein, no replacement shall be deemed to occur and the prior regulations shall remain. These regulations supersede and replace in their entirety previous rules of the board: "Infectious Waste Management Regulations, effective May 2, 1990 and "Regulated Medical Waste Management Regulations" effective June 30, 1993.

C. These regulations shall remain in effect until the Virginia Waste Management Board shall amend, rescind or otherwise alter them. Where there appears to be a conflict between these regulations and other regulations adopted at a future date, and such future regulations do not specifically clarify these regulations, these regulations shall be controlling.

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

§ 2.6. Relationship to other bodies of regulation.

A. The Solid Waste Management Regulations address special needs for regulated medical waste management. Any regulated medical waste management facility must also conform to any applicable sections of the solid waste management regulations issued by the board and any special solid waste management regulations such as those defining financial assurance requirements. If there is a

conflict between the details of regulations herein and the others, these regulations are controlling.

B. Any regulated medical waste management facility must also comply with any applicable sections of the Hazardous Waste Management Regulations issued by the department. If there is a conflict between the details of regulations herein and the hazardous waste management regulations, the latter regulations are controlling.

C. Intrastate shipment of hazardous materials are subject to the Hazardous Materials Transportation Regulations of the department. If there is a conflict between the details of regulations herein and the hazardous materials transportation regulations, the latter are controlling.

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

E. Nothing herein either precludes or enables a local governing body to adopt ordinances. Compliance with one body of regulation does not insure compliance with the other, and, normally, both bodies of regulation must be complied with fully.

PART III.
IDENTIFICATION AND LISTING OF REGULATED MEDICAL WASTES.

Article 1.
General.

§ 3.1. Purpose and scope.

A. Wastes identified in Part III are regulated medical wastes, which are subject to Virginia Regulated Medical Waste Management Regulations.

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

§ 3.2. Materials rendered nonregulated.

Wastes that were once regulated and were managed in accord with these regulations, and that are no longer regulated medical waste, shall be managed in accordance with such other regulations of the board that apply.

1. Packaging. Treated waste that was once regulated, but is no longer regulated medical waste, shall bear a label until it is disposed clearly indicating that it is not regulated and an explanation why it is no longer regulated. Solid waste packaged as regulated medical waste is regulated medical waste.

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

§ 3.3. Recycled materials.

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

B. Bed linen, instruments, medical care equipment and other materials that are routinely reused for their original purpose are not subject to these regulation until they are discarded and are a solid waste. These items do not include reusable carts or other devices used in the management of regulated medical waste (See § 5.6).

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

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

Article 2.
Exemptions and Exclusions.

§ 3.5. Exemptions to the regulations.

Exemptions to these regulations include:

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

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

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

NPDES permit.

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

5. Health care professionals who generate regulated medical waste in the provision of health care services in their own office, in the private home of a patient, or in a limited small clinic are exempt from those parts of the regulations listed in subdivision 6 of § 3.5 provided the regulated medical waste is disposed of as authorized below:

a. With respect to regulated medical waste other than sharps, the office, clinic or the patient's home does not accumulate sufficient regulated medical waste to create a storage facility as regulated by Part V, the regulated medical waste is packaged and labeled in accord with Part IV, and the regulated medical waste is delivered to a permitted regulated medical waste treatment or storage facility in accordance with Part VI, except as exempted by subdivision 6 of § 3.5.

b. With respect to sharps, the sharps are packaged in rigid, highly leak resistant and highly puncture resistant containers and labeled in accord with Part IV, and before filled to capacity, such containers are delivered to a permitted regulated medical waste treatment or storage facility.

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

(1) Himself or herself, or by his or her employee (who is also a health care professional), or

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

d. Notwithstanding any provisions to the contrary in these regulations, regulated medical waste transported pursuant to subdivision 5 c (1) of this section shall be exempt from subdivision 4 of § 4.6 of these regulations.

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

6. Persons qualifying under subdivision 5 of § 3.5 shall be exempt from §§ 4.12, 4.13, 4.14, 4.16 A, 4.17 and 6.1 through 6.9 of these regulations, unless otherwise required by subdivision 5 of § 3.5.

§ 3.6. Exclusions.

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

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

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

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

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

B. The following solid wastes are not regulated medical wastes:

1. Meat or other food items being discarded because of spoilage or contamination, and not included in § 3.8.

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

C. The following regulated medical wastes are not subject to the requirements of these regulations when dispersed among other wastes and not accumulated separately:

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

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

Article 3.
Characteristics.

§ 3.7. Characteristics of regulated medical waste.

A solid waste is a regulated medical waste if it meets either of the two criteria of this section:

1. Any solid waste, as defined in these regulations is a regulated medical waste if it is suspected by the

health care professional in charge of being capable of producing an infectious disease in humans. A solid waste shall be considered to be capable of producing an infectious disease if it has been or is likely to have been contaminated by an organism likely to be pathogenic to healthy humans, such organism is not routinely and freely available in the community, and if such organism has a significant probability of being present in sufficient quantities and with sufficient virulence to transmit disease. If the exact cause of a patient's illness is unknown, but the health care professional in charge suspects a contagious disease is the cause, the likelihood of pathogen transmission shall be assessed based on the pathogen suspected of being the cause of the illness.

2. Any solid waste that is not excluded from regulation is an regulated medical waste if it is listed in § 3.8 of these regulations.

Article 4.
Controlled Regulated Medical Wastes.

§ 3.8. Lists of controlled regulated medical wastes.

In addition to wastes described by the characteristics set forth in § 3.7, each solid waste or solid waste stream on the following lists is subject to these regulations, unless exempted in § 3.5 or excluded in § 3.6 of these regulations.

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

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

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

4. Sharps. Sharps likely to be contaminated with organisms that are pathogenic to healthy humans, and all sharps used in patient care or veterinary practice are regulated medical wastes.

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

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

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

PART IV.
GENERAL REQUIREMENTS.

Article 1.
Permits and Permits By Rule.

§ 4.1. Permit required.

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

§ 4.2. Persons required to have a permit.

Any person required to have a permit for facilities for the management of regulated medical waste shall make a formal application for a permit in accord with Part X of these regulations, with the exception that certain facilities may be deemed to have a permit by rule in accord with § 4.3 of these regulations.

§ 4.3. Persons qualifying for a permit by rule.

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

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

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

3. No regulated medical waste is transported from or received by the facility without being properly packaged and labelled in accordance with these regulations.

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

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

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

7. The owner or operator of the facility has submitted to the director appropriate Key Personnel Disclosure Statements.

Article 2.
Financial Assurance.

§ 4.4. Financial assurance requirements.

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

Article 3.
Packaging and Labeling Requirements for Regulated Medical Waste.

§ 4.5. Responsibility for packaging and labeling.

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

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

§ 4.6. Packaging prior to storage, treatment, transport or disposal.

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

1. Regulated medical wastes shall be contained in two highly leak resistant, plastic bags each capable of passing the ASTM 125 pound Drop Test For Filled Bags (D959) and each sealed separately, or one highly leak resistant, plastic bag inside a rigid container. Free liquids shall be contained in sturdy highly leak resistant containers that resist breaking; heavy materials must be supported in boxes. Sharps shall be collected at the point of generation in highly puncture resistant containers, and those containers closed and placed inside a plastic bag prior to storage or transport.

2. All bags containing regulated medical waste shall be red in color. Waste contained in red bags shall be considered regulated medical waste and managed as regulated medical waste.

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

4. In addition to the plastic bag containers described in this section, all regulated medical wastes must be enclosed in a rigid container before it is transported off-site or in a vehicle on a street or highway. The box or container must meet the standards of (1993) 49 CFR 171 through 178 for a classified strength of at least 275 pounds per square inch using the Mullen Test or 48 pounds per inch using the Edge Crush Test.

Note: The Mullen test is T 810 om-80, Bursting Strength of Corrugated and Solid Fiberboard, by the

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

§ 4.7. Labeling requirements.

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

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

2. "Regulated Medical Waste" in large print.

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

4. The Biological Hazard Symbol.

§ 4.8. Etiological agents.

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

§ 4.9. Sharps.

Sharps must be placed directly into rigid and highly puncture resistant containers.

§ 4.10. Protection of packagers.

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

§ 4.11. Special requirements for reusable containers.

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

1. The waste in the cart or container is packaged fully in accordance with §§ 4.6 through 4.9. Discrete units of waste and the cart or container must be properly labeled in accordance with § 4.7.

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

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

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

Article 4.
Management Of Spills Of Regulated Medical Waste.

§ 4.12. Spill containment and cleanup kit.

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

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

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

3. Enough red plastic bags to double enclose 150% of the maximum load accumulated or transported (up to a maximum of 500 bags), that meet the ASTM 125 pound Drop Test For Filled Bags (D959) and are

accompanied by sealing tape (or devices) and labels (or tags). These bags shall be large enough to overpack any box or other container normally used for regulated medical waste management by that facility.

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

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

§ 4.13. Containment and clean up procedures.

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

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

2. The clean up crew will don the cleanup outfits described in subdivision 4 of § 4.12 and secure the spill area.

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

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

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

6. Clean and disinfect nondisposable items.

7. Clean and disinfect cleanup outfits before removing.

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

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

C. When a spill involves only a single container of regulated medical waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the cleanup may elect to use alternate appropriate dress and procedures than those described in §§ 4.12 and 4.13. Such alternate dress or procedures shall provide an protection of the health of workers and the public equivalent to that described above.

Article 5.
Closure Requirements.

§ 4.14. Closure requirements.

When a unit that has been used for regulated medical waste management is to cease operations involving regulated medical wastes, it shall be thoroughly cleaned and disinfected. All regulated medical waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected.

Article 6.
Treatment and Disposal.

§ 4.15. Methods of treatment and disposal.

A. All regulated medical waste must be incinerated, sterilized by steam, treated by a method as described in Part VII, VIII, or IX of these regulations.

B. No regulated medical waste shall be disposed of in a solid waste landfill or other solid waste management facility. Upon authorized treatment and management in accord with these regulations, the solid waste or its ash is not regulated medical waste and may be disposed of at any landfill or other solid waste management facility permitted to receive putrescible solid waste or garbage, provided the disposal is in accordance with the Solid Waste Management Regulations, VR 672-20-10, and other applicable regulations and standards.

C. Pathological wastes and bulk liquids must be dispersed in other regulated medical waste when treated and not concentrated. Pathological wastes and bulk liquids shall not constitute more than 10% by weight of any load to a unit providing treatment. However, this requirement does not prohibit the disposal, without storage and with or without grinding, of wastes, including blood and body fluids, in a sanitary sewer system.

D. Regulated medical waste in closed bags or containers shall not be compacted or subjected to violent mechanical stress; however, after it is fully treated and it is no longer regulated medical waste, it may be compacted in a closed container. Nothing in this section shall prevent the puncturing of containers or packaging immediately prior to permitted treatment in which grinding, shredding, or puncturing is integral to the process units and, provided the puncturing is performed in a safe and sanitary method. Devices that grind, shred, compact or reduce the volume of regulated medical waste may be employed at the point of generation and prior to enclosing the regulated medical waste in plastic bags and other required packaging; however, the waste remains regulated medical waste.

Article 7.
Recordkeeping.

§ 4.16. Recordkeeping requirements.

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

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

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

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

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

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

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

1. A signed certificate for each load received in which the generator affirms that the load does not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in § 4.17; or

2. A signed and effective contract, inclusive of all loads received from a generator, in which the generator affirms that all loads will not contain hazardous waste (including cytotoxic medications) or radioactive materials, except as provided in § 4.17.

Article 8.
Radioactive Materials.

§ 4.17. Management of radioactive materials.

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

Article 9.

Quarterly Reporting.

§ 4.18. Quarterly reporting by facilities.

Operators of regulated medical waste management facilities that receive more than 100 pounds in any month of regulated medical waste from off-site shall file a written report of regulated medical waste amounts received during the preceding quarter on the tenth business day of January, April, July, and October of each year. The report shall contain:

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

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

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

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

PART V.
SPECIAL REQUIREMENTS FOR STORAGE FACILITIES.

§ 5.1. Application of Part V.

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

§ 5.2. Sanitation.

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

§ 5.3. Access.

All areas used to store regulated medical waste must have access control that limits access to those persons specifically designated to manage regulated medical waste.

§ 5.4. Temperature control and storage period.

Any regulated medical waste that is more than seven days past its date of generation and is stored must be refrigerated, stored in an ambient temperature between 35° and 45° Fahrenheit (2° and 7° Celsius). No regulated medical waste shall be stored for more than 30 days.

§ 5.5. Drainage and ventilation.

All floor drains shall discharge directly to an approved sanitary sewer system. All ventilation shall discharge so as to minimize human exposure to the effluent. Transfer of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste, unless the transfer involves less than 64 gallons of regulated medical waste during a 24 hour period.

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

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

1. The regulated medical waste in the cart or container shall be packaged fully in accordance with §§ 4.6 through 4.9. Discrete units of regulated medical waste and the cart or container must be properly labeled.

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

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

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

§ 5.7. Container management.

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

PART VI.
SPECIAL REQUIREMENTS FOR TRANSPORTATION.

§ 6.1. Application Of Part VI.

The requirements of this part apply to all transportation of regulated medical waste.

§ 6.2. Sanitation.

Surfaces of equipment used to transport regulated medical waste must be clean and impermeable to liquids, if those areas are involved with the management of the waste. Carpets and floor coverings with seams shall not be used. Vectors shall be controlled. All trucks and equipment used to transport regulated medical waste must be thoroughly cleaned and disinfected before being used for any other purpose, at the end of each business day or 24-hour period of use, and prior to any transfer of ownership.

§ 6.3. Access.

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

§ 6.4. Temperature control and storage period.

Any regulated medical waste that is more than seven days past its date of generation and is transported must be refrigerated, maintained in an ambient temperature between 35° and 45° Fahrenheit (2° and 5° Celsius), during transport and during any storage following transport. No regulated medical waste shall be stored for more than 30 days. Time in transport shall be accounted as time in storage.

§ 6.5. Drainage.

All drainage shall discharge directly or through a holding tank to an approved sanitary sewer system. All transfers of regulated medical waste between a vehicle and another vehicle or between vehicle and a structure shall occur under a roof that protects the operation from rainfall and over a floor or bermed pavement that will contain leaks and spills of liquids from the waste, unless the transfer involves less than 64 gallons of regulated medical waste during a 24 hour period.

§ 6.6. Packaging, labeling and placards.

A. No person shall transport or receive for transport any regulated medical waste that is not packaged and labeled in accord with Part IV of these regulations.

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

C. Transportation vehicles must bear placards depicting the international symbol for biologically hazardous materials (See § 4.7). Placards shall conform to standards of the United States Department of Transportation specified in (1993) 49 CFR 172 Subpart F regarding size, placement, color and detail.

§ 6.7. Management of spills of regulated medical waste.

A. All vehicles transporting regulated medical wastes

are required to carry a spill containment and clean up kit in the vehicle whenever regulated medical wastes are conveyed. The kit shall consist of at least the following items:

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

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

3. Enough red plastic bags to double enclose 150% of the maximum load accumulated or transported (up to a maximum of 500 bags) that meet the ASTM 125 pound Drop Test For Filled Bags (D959) and are accompanied by seals and labels. These bags shall be large enough to overpack any box or other container normally used for regulated medical waste management.

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

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

B. Following a spill of regulated medical waste or its discovery, the following procedures shall be implemented:

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

2. The clean up crew will don the clean up outfits described in subdivision A 4 of this section and secure the spill area.

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

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

5. Disinfect the area and take other clean up steps deemed appropriate.

6. Clean and disinfect clean up outfits before removing.

7. Clean and disinfect nondisposable items.

8. Remove clean up outfits and place disposal items in clean up bag.

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

C. When a spill involves only a single container of regulated medical waste whose volume is less than 32 gallons and spilled liquid whose volume is less than one quart, the individual responsible for the clean up may elect to use alternate appropriate dress and procedures. Such alternate dress or procedures shall provide protection of the health of workers and the public equivalent to that described above.

§ 6.8. Loading and unloading.

Persons loading and unloading transportation vehicles with regulated medical waste shall wear clean, heavy neoprene (or equivalent) gloves and clean uniforms.

§ 6.9. Registration of transporters.

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

B. Data to be submitted by persons wishing to register as a transporter of regulated medical waste shall be as follows:

1. Name of the person or firm.

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

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

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

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

6. a. Any person or firm other than reported in subdivision 1 of this subsection that is associated with the registering firm or any other name under which that person or firm does business.

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

vehicles and operators.

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

8. A copy of the signed certification statement as follows:

I, (Full Name of Chief Executive) , am chief executive officer of (Legal Name Of Firm) and do here by affirm that all the information provided in this application is correct to the best of my knowledge; and I further affirm that neither this firm, any antecedent firm to this firm, or any of the officers of this or antecedent firms has been convicted of a felony in any state.

C. Within 30 calendar days following the change of any data in subsection B of this section, the transporter shall notify the department of that change. Failure to notify the department nullifies the registration and invalidates the registration number.

D. Use of a false or invalid registration number is prohibited.

Note: All filings of data and requests for registration number and issuance of a registration number shall be in writing.

§ 6.10. Transport by mail.

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

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

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

3. No package may be more than 35 pounds by weight.

§ 6.11. Transport using reusable carts or containers.

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

B. Reusable carts or containers used to transport regulated medical waste must be sealed, highly puncture resistant, and highly leak resistant. They shall conform in all respects to 49 CFR 172 through 49 CFR 178 for containers and transport of "regulated medical waste."

§ 6.12. Regulated medical waste manifest.

(Reserved)

PART VII.
SPECIAL REQUIREMENTS FOR INCINERATION.

§ 7.1. Application of Part VII.

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

§ 7.2. Performance standards.

A. All incinerators for regulated medical waste shall maintain the following level of operational performance at all times:

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

2. Loading and operating controls. The incinerator shall have interlocks or other process control devices to prevent feeding of the incinerator until the conditions in subdivision A 1 of this section are achieved. Such devices may have an override for cold start-up. In the event low temperatures occur, facilities shall have automatic auxiliary burners that are capable, excluding the heat content of the wastes, of independently maintaining the secondary chamber temperature at the minimum of 1800° F.

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

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

B. The incinerator shall be permitted under regulations

of the State Air Pollution Control Board and be in compliance with the regulations of that body.

§ 7.3. Analysis and management of the ash product; procedure; results and records; disposition of ash; ash storage.

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

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

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

C. If a waste ash is found to be hazardous waste (based on a sample and a confirmation sample) the waste ash shall be disposed of as a hazardous waste in accord with the Virginia Hazardous Waste Management Regulations. If ash is found not to be hazardous waste by analysis, it may be disposed of in a solid waste landfill that is permitted to receive garbage, putrescible waste or incinerator ash, provided the disposal is in accordance with the Solid Waste Management Regulations, VR 672-20-10. If the ash is found to be hazardous waste, the operator shall notify the Director of the Department of Environmental Quality within 24 hours. No later than 15 calendar days following, the permittee shall submit a plan for treating and disposing of the waste on hand at the facility and all unsatisfactorily treated waste that has left the facility. The permittee may include with the plan a description of the corrective actions to be taken to prevent further unsatisfactory performance. No ash subsequently generated from the incinerator waste stream that was found to be hazardous waste shall be sent to a nonhazardous solid waste management facility in the Commonwealth without the express written approval of the director.

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

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

§ 7.4. Compliance with other parts of these regulations.

In general, incinerator facilities shall comply with all other parts of these regulation. The site of the incinerator facility is a storage facility and must comply with Part V of these regulations. Management of spills or the opening in an emergency of any regulated medical waste package, shall comply with §§ 4.12 and 4.13 of these regulations. Regulated medical wastes that are or will be incinerated in accordance with these regulations are not required to be shredded or ground.

§ 7.5. Unloading operations.

Persons loading and unloading transportation vehicles with regulated medical waste shall wear clean, heavy neoprene gloves (or equivalent) and clean overalls.

§ 7.6. Radiation monitoring.

Each treatment facility shall establish and maintain a systematic process of monitoring all waste received for the presence of radioactivity above background ambient values. The process shall be capable of detecting any package emitting radiation in excess of background ambient values. When a package is detected that is emitting radiation of more than 30 microrems per hour at the surface of the package, it shall be held in isolation with access controlled. The Nuclear Regulatory Commission, the Virginia Department of Health, the Department of Environmental Quality, and the generator shall be notified immediately of each occurrence by the

facility operator. Notification shall be by telephone and followed by written notice within five calendar days. No later than 30 calendar days following the date of the telephone notice, the facility operator shall notify the department of the actions taken to resolve the incident and properly manage the packages.

PART VIII.
SPECIAL REQUIREMENTS FOR STEAM STERILIZATION.

§ 8.1. Application of Part VIII.

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

§ 8.2. Performance standards.

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

1. Operational temperature and detention. Whenever regulated medical wastes are treated in a steam sterilizer, all the regulated medical waste shall be subjected to the following operational standards (at 100% steam conditions and all air evacuated):

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

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

c. Temperatures of not less than 320° F. for 16 minutes at 80 pounds per square inch of gauge pressure.

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

2. Operational controls and records.

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

b. A log shall be kept at each steam sterilization unit that is complete for the preceding three-year period. The log shall record the date, time and operator of each usage; the type and approximate amount of regulated medical waste treated; the dates and results of calibration; and the results of effective testing described in subdivision 2 a of this section. Where multiple steam sterilization units are used, a working log can be maintained at each unit and such logs periodically consolidated at a central location. The consolidated logs shall be retained for three years and be available for review.

c. Except as described in subdivision 2 b of this section, regulated medical waste shall not be compacted or subjected to violent mechanical stress before steam sterilization; however, after it is fully sterilized it may be compacted in a closed container.

d. Except as provided in § 7.4, § 8.3 E or § 9.3 E, regulated medical waste shall be ground or shredded into particles that are no larger than 0.50 inches in any dimension (this is the statistical mean for each dimension with a 95% confidence limit). Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automatic and conducted by enclosed mechanical equipment.

§ 8.3. Disposal of treated wastes.

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

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

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

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

E. Small scale processes providing treatment in accordance with this part of no more than five pounds of regulated medical waste per day (monthly average) are

not required to shred or grind the waste. Small scale facilities that do not grind or shred the waste must seal the treated waste in an orange plastic bag and securely attach a tag or label with the following message in indelible ink and legible print of a 21-point or greater typeface:

"The generator certifies that this waste has been treated in accordance with the Virginia Regulated Medical Waste Management Regulations and is no longer regulated medical waste.
Treated: (include date treatment performed)
Generator: (include name, address and telephone number of generator) ."

§ 8.4. Compliance with other parts of these regulations.

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and must comply with Part V of these regulations. Management of spills or the opening in an emergency of any regulated medical waste package, shall comply with §§ 4.12 and 4.13 of these regulations.

§ 8.5. Radiation monitoring.

Each treatment facility shall establish and maintain a systematic process of monitoring all waste received for the presence of radioactivity above background ambient values. The process shall be capable of detecting any package emitting radiation in excess of background ambient values. When a package is detected that is emitting radiation of more than 30 microrems per hour at the surface of the package, it shall be held in isolation with access controlled. The Nuclear Regulatory Commission, the Virginia Department of Health, the Department of Environmental Quality, and the generator shall be notified immediately of each occurrence by the facility operator. Notification shall be by telephone and followed by written notice within five calendar days. No later than 30 calendar days following the date of the telephone notice, the facility operator shall notify the department of the actions taken to resolve the incident and properly manage the packages.

PART IX.
SPECIAL REQUIREMENTS FOR ALTERNATIVE TREATMENT.

§ 9.1. Application of Part VIII.

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

§ 9.2. Performance standards.

All alternative treatment facilities for regulated medical waste shall maintain the following level of operational performance at all times:

1. Operational controls and records. The following requirements apply to all alternative treatment facilities.

a. Except as provided in § 7.4, § 8.3 E or § 9.3 E, regulated medical waste shall be ground or shredded into particles that are no larger than 0.50 inches in any dimension (this is the statistical mean for each dimension with a 95% confidence limit). Grinding or shredding shall occur in a closed unit immediately preceding or following the treatment unit. Transfer from a grinder or shredder to or from a treatment unit shall be automated and conducted by enclosed mechanical equipment.

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

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

d. Except as described in subdivisions 1 a and 1 e of this section, regulated medical waste shall not be compacted or subjected to violent mechanical stress before treatment. After it is fully treated it may be compacted in a closed container.

e. All process units for the preparation or treatment of regulated medical waste shall be in closed vessels under a negative pressure atmospheric control that filters all vents, discharges, and fugitive emissions of air from the process units through a high efficiency particulate air (HEPA) filter with and efficiency of 99.97% for 0.3 microns.

2. Special requirements by type of treatment. Facilities shall comply with the following treatment requirements for the specific technology employed.

a. Dry heat treatment.

(1) Any treatment unit employing dry heat as the main treatment process shall subject all the regulated medical waste to:

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

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

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

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

(3) Each treatment unit shall be equipped to sense, display and continuously record the temperature of the treatment chamber.

b. Microwave treatment.

(1) Microwaving treatment shall incorporate pretreatment by shredding and steam injection or induction.

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

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

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

(5) Process temperatures at the exposure chamber entry and exit the waste flow rate shall be continuously monitored, displayed, and recorded.

c. Chlorination.

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

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

d. Other alternative treatment technologies. All alternative treatment technologies approved by the director shall conform to the requirements of this part and any additional requirements the director shall impose at the time of approval.

(1) Any person who desires to use a treatment technology other than those described in subdivisions 2 a, 2 b, and 2 c of this section, Part VII or Part VIII shall petition the director for a review under §§ 11.3 and 11.4 of these regulations.

(2) If the director finds that the technology and application is in accord with Article 3 (§ 11.7 et seq.) of Part XI, he may consider the facility for permitting under Part X of these regulations.

(3) The director may issue a public notice that an applicant has demonstrated compliance of a process with §§ 11.8 through 11.12 and consider § 11.13 in a separate review.

§ 9.3. Disposal of treated wastes.

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

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

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

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

E. Small scale processes providing treatment of no more than five pounds per day (monthly average) of regulated medical waste in accordance with this part are not required to shred or grind the waste. Small scale facilities that do not grind or shred the waste must seal the treated waste in an orange plastic bag and securely attach a tag or label with the following message in indelible ink and legible print of a 21-point or greater typeface:

"The generator certifies that this waste has been treated in accordance with the Virginia Regulated Medical Waste Management Regulations and is no longer regulated medical waste.
Treated: (include date treatment performed)
Generator: (include name, address and telephone number of generator) ."

§ 9.4. Compliance with other parts of these regulations.

In general, alternative treatment facilities shall comply with all other parts of these regulations. The site of the treatment facility is a storage facility and must comply with Part V of these regulations. Management of spills or the opening in an emergency of any regulated medical waste package, shall comply with §§ 4.12 and 4.13 of these regulations.

§ 9.5. Radiation monitoring.

Each treatment facility shall establish and maintain a systematic process of monitoring all waste received for the presence of radioactivity above background ambient values. The process shall be capable of detecting any package emitting radiation in excess of background ambient values. When a package is detected that is emitting radiation of more than 30 microrems per hour at the surface of the package, it shall be held in isolation with access controlled. The Nuclear Regulatory Commission, the Virginia Department of Health, the Department of Environmental Quality, and the generator shall be notified immediately of each occurrence by the facility operator. Notification shall be by telephone and followed by written notice within five calendar days. No later than 30 calendar days following the date of the telephone notice, the facility operator shall notify the department of the actions taken to resolve the incident and properly manage the packages.

PART X.
PERMIT APPLICATION AND ISSUANCE PROCEDURES.

§ 10.1. Scope of Part X.

This part of the regulations describes procedures for obtaining a permit for the treatment or storage of regulated medical waste, unless specifically excluded by these regulations or under a permit by rule as defined in §§ 4.1, 4.2, and 4.3 of these regulations. Owners and operators of regulated medical waste management units shall have permits during the active life (including the closure periods) of the unit. The director may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility.

§ 10.2. Applicability; exemptions from permit requirements; experimental facility permits; variances.

A. Except for permit by rule facilities described in Part IV, no person shall construct, operate or modify a regulated medical waste management facility in this Commonwealth without a permit issued by the director.

B. Each regulated medical waste management facility permit shall be limited to one site and shall be nontransferable between sites.

C. Issuance of a new permit is required when there is:

1. Any new regulated medical waste management facility; or

2. Any change in design or process of a regulated medical waste management facility that will, in the opinion of the director, result in a substantially different type of facility.

D. Notwithstanding the above, the management of materials excluded under Part III or conditionally exempt under Part III of these regulations shall not require a permit.

E. The director may issue an experimental facility permit for any regulated medical waste treatment facility that proposes to utilize an innovative and experimental regulated medical waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part VII, Part VIII or Part IX. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits shall:

1. Provide for the construction of such facilities based on the standards shown in Part V, Part VII, Part VIII, or Part IX, as necessary;

2. Provide for operation of the facility for no longer than one calendar year unless renewed as provided elsewhere in these regulations;

3. Provide for the receipt and treatment by the facility of only those types and quantities of regulated medical waste that the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

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

For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts V, VII, VIII or IX, except that there may be no modification or waiver of regulations regarding local certification, disclosure statement requirements, financial responsibility (including insurance) or of procedures regarding public participation.

No experimental permit may be renewed more than

three times. Each such renewal shall be for a period of not more than one calendar year.

F. The director may grant a variance from any regulation contained in this part to a permittee provided the requirements of Part X are met.

§ 10.3. Permit conditions.

When issuing a permit, the director may include conditions that he finds necessary to protect public health or the environment or to ensure compliance with these regulations.

§ 10.4. Permit application procedures; notice of intent; Part A application; Part B application; permit issuance.

A. Any person who proposes to establish a new regulated medical waste management facility, or modify an existing regulated medical waste management facility, shall submit a permit application to the department, using the procedures set forth in § 10.2 and other pertinent sections of this part.

B. To initiate the permit application process, any person who proposes to establish a new regulated medical waste management facility ("regulated medical waste management"), or modify an existing regulated medical waste management facility, or to amend an existing permit shall file a notice of intent with the director stating the desired permit or permit amendment, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by area and site location maps.

No application shall be deemed complete unless it is accompanied by a disclosure statement as shown in Appendix 10.1 for all key personnel.

No application for a permit for a regulated medical waste management facility shall be considered complete unless the notice of intent is accompanied by a certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable ordinances. No certification shall be required for the application for an amendment or modification of an existing permit. For the convenience of the regulated community, a certification form in shown in Appendix 10.2.

If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or reservations, the applicant will be notified that he may submit his application for a permit. This application shall be submitted in two parts, identified as Part A and Part B .

C. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

1. The applicant shall complete, sign and submit three copies of the Part A application containing required information and attachments as specified in § 10.5 to the director.

2. The Part A application will be reviewed for completeness. The applicant will be notified within 15 calendar days whether the application is administratively complete or incomplete. If complete information is not provided within 30 calendar days after the applicant is notified, the application will be returned to the applicant without further review.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of the Part A application or provide conditions to be made a part of the approval.

4. In case of the approval or conditional approval, the applicant may submit the Part B application providing the required conditions are addressed in the Part B application.

D. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the director a Part B application to include the required documentation for the specific regulated medical waste management facility as provided for in § 10.4, 10.5, or 10.6. The Part B application and supporting documentation shall be submitted in three copies. The Part B application must include the required financial assurance documentation. Until the closure plans are approved and a draft permit is being prepared, the applicant must provide evidence of commitment to provide the required financial assurance from a financial institution or insurance company. If financial assurance is not provided within 30 calendar days of notice by the director, the permit shall be denied.

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within 30 calendar days whether the application is complete or what additional documentation is required. The Part B application will not be evaluated until a administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically and regulatorily adequate or that the department intends to deny the application.

4. The procedures addressing the denial are contained in § 10.10.

E. If the application is found to be technically adequate and in full compliance with these regulations, a draft permit shall be developed by the department.

A notice of the availability of the proposed draft permit shall be made in a newspaper with general circulation in the area where the facility is to be located. A informational proceeding will be scheduled and the notice shall be published at least 30 calendar days in advance of the informational proceeding on the draft permit. Copies of the proposed draft permit will be available for viewing at the applicant's place of business or at the regional office of the department upon request in advance of the informational proceeding.

The department shall hold the announced informational proceeding 30 calendar days or more after the notice is published in the local newspaper. The informational proceeding shall be conducted by the department within the local government jurisdiction where the facility is to be located. A comment period shall extend for a 10-day period after the conclusion of the informational proceeding.

A final decision to permit, to deny a permit or to amend the draft permit will be rendered by the director within 30 calendar days of the close of the public comment period.

The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also § 10.10), issuance of the permit as drafted, or amendment of the draft permit and issuance.

§ 10.5. Part A permit application requirements.

A. The information provided in this section shall be included in the Part A of the permit application for all regulated medical waste management facilities unless otherwise specified in this section.

B. The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection F of this section, the Part A application form shown in Appendix 10.3 with all pertinent information and attachments required by this section.

C. A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute United States Geological Survey topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

D. A near-vicinity map shall be prepared and attached as part of the application. The vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200'). The vicinity map shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. The vicinity maps may be an enlargement of a United States Geological Survey topographical quadrangle or a recent aerial photograph. The vicinity map shall depict the following:

1. All homes, buildings or structures including the layout of the buildings that will comprise the proposed facility;

2. The boundaries of the proposed facility;

3. The limits of the actual disposal operations within the boundaries of the proposed facility, if applicable;

4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

5. The base flood plain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;

6. Existing land uses and zoning classification;

7. All water supply wells, springs or intakes, both public and private;

8. All utility lines, pipelines or land based facilities (including mines and wells); and

9. All parks, recreation areas dams, historic areas, wetlands areas, monument areas, cemeteries, wildlife refuges, unique natural areas or similar features.

E. A copy of the lease or deed (showing page and book location) or certification of ownership of the site. The department will not consider an application for a permit from any person who does not demonstrate legal control over the site for the period of the permit life. A

documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true deed must be provided to the department before construction at the site begins.

F. A signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a regulated medical waste management facility on the site, a copy of the notice and the names and addresses of those to whom the notices were sent.

§ 10.6. Part B permit application requirements.

A. Owners or operators of all regulated medical waste management facilities will use the application procedures of this section. The information provided in this section is required in a Part B permit application.

B. Design plans shall be prepared by a person or firm registered to practice professional engineering in the Commonwealth. The plans shall demonstrate compliance with Parts V, VII, VIII, and IX and include at least the following:

1. Existing site conditions plans sheet indicating site conditions prior to development.

2. Engineering modification plan sheet indicating the appearance of the site after installation of engineering modifications. More than one plan sheet may be required for complicated sites.

3. Phasing plan sheets showing the progression of site development through time. At a minimum, a separate plan shall be provided for initial site preparations and for each subsequent major phase or new area where substantial site preparation must be performed. Each such plan shall include a list of construction items and quantities necessary to prepare the phase indicated.

4. Design drawings of the regulated medical waste management facility to include:

a. Profile and plan views of all structures and enclosures showing dimensions. Plan views showing building setbacks, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas and site boundaries;

b. Interior floor plans showing the layout, profile view and dimensions of the processing lines, interior unloading, sorting, storage and loading areas as well as other functional areas;

c. A plan identifying, locating and describing utilities that will service the facility including, but not limited to, the storm water drainage system, sanitary sewer system, water supply system and energy system; interface of the proposed facility with the existing utility systems.

5. When applicable, the following information shall be presented on plan sheets:

a. All information on existing site conditions map unless including this information leads to confusion with the data intended for display.

b. A survey grid with base lines and monuments to be used for field control.

c. All drainage patterns and surface water drainage control structures both within the area and at the site perimeter to include berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, or other methods of erosion control.

d. Access roads and traffic flow patterns to and within the storage and transfer areas.

e. All temporary and permanent fencing.

f. The methods of screening such as berms, vegetation or special fencing.

g. Wastewater collection, control and treatment systems that may include pipes, manholes, trenches, berms, collection sumps or basins, pumps, and risers.

h. Special waste handling areas.

i. Construction notes and references to details.

j. Other appropriate site features.

6. Detailed drawings and typical sections for, as appropriate, drainage control structures, access roads, fencing, buildings, signs, and other construction details.

C. A design report for the facility is required and will provide the technical details and specifications necessary to support the design plans consisting of, at least, the following information:

1. The introduction to the design report shall identify the project title; engineering consultants; site owner, licensee and operator; site life and capacity; municipalities, industries and collection and transportation agencies served; and waste types to be disposed. It shall also identify any exemptions desired by the applicant.

2. The design capacity specifications shall include, at a minimum, the following information:

a. The rated capacity of the facility, in both tons

per day and tons per hour;

b. The expected short-term and projected future long-term daily loadings;

c. The designation of normal loading, unloading and storage areas, including capacities in cubic yards and tons. Description of the time such areas can be practically used, based on expected short-term daily loadings;

d. The designation of emergency loading, unloading, storage or other disposal capabilities to be used when facility system down time exceeds 24 hours;

e. The designation of alternate disposal areas or plans for transfer of stored waste in the event facility system down time exceeds 72 hours;

3. The design specifications for process residues to include the following:

a. The expected daily quantity of waste residue generated;

b. The proposed ultimate disposal location for all facility-generated waste residues including, but not limited to, treated waste, ash residues and by-pass material, residues resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

c. A descriptive statement of any materials use, reuse, or reclamation activities to be operated in conjunction with the facility, either on the incoming regulated medical waste or the ongoing residue;

4. A descriptive statement and detailed specification of the proposed onsite and off-site transportation system intended to service vehicles hauling waste to the facility for processing, and vehicles removing reclaimed materials and or process residues from the facility. Onsite parking, access and exit points, and the mechanisms or features that will be employed to provide for an even flow of traffic into, out of, and within the site, shall be identified;

5. A detailed analysis shall be made of the financial responsibility for the time of site closing; and

6. An appendix to the design plan shall be submitted and shall include any additional data not previously presented, calculations, material specifications, operating agreements, wastewater treatment agreements, documents related to long-term care funding and other appropriate information.

D. The results of a waste supply analysis program characterizing the quantity and composition of the regulated medical waste in the service area shall be submitted. The waste characterization shall be performed by utilizing a statistically relevant plan that justifies the population sample. The sampling program shall provide for seasonal fluctuations in the quantity and composition of the waste types to be handled at the facility. Anticipated changes in regulated medical waste quantity and composition for each of the waste types to be serviced by the proposed facility shall be projected for that term reflecting anticipated facility life. Within this framework, the effect of existing or future source separation programs on the supply of regulated medical waste within the service area shall be described and quantified. Quantity and compositions analyses shall be carried out simultaneously where possible and shall provide information relating to anticipated maximum, minimum and average daily loading.

E. The operations manual shall provide the detailed procedures by which the operator will implement the design plans and specifications. As a minimum, the operations manual shall include:

1. Daily operations including a discussion of the timetable for development; waste types accepted or excluded; typical waste handling techniques; hours of operation; traffic routing; drainage and erosion control; windy, wet and cold weather operations; fire protection equipment; manpower; methods for handling of any unusual waste types; methods for vector, dust and odor control; daily cleanup; salvaging; record keeping; parking for visitors and employees; monitoring; backup equipment with names and telephone numbers where equipment may be obtained; and other special design features. This information may be developed as a removable section to improve accessibility for the site operator.

2. Site closing information consisting of a discussion of the anticipated sequence of events for site closing and discussion of those actions necessary to prepare the site for long-term care and final use.

3. Long-term care information including a discussion of the procedures to be utilized for the inspection and maintenance of run-off control structures, erosion damage, wastewater control, and other long-term care needs as required by the specific facility design.

F. An emergency contingency plan that delineates procedures for responding to fire, explosions or any unplanned sudden or non-sudden releases of harmful constituents to the air, soil, or surface or ground water shall be submitted to the department as part of the Part B application. Before submission to the department it will be coordinated with the local police and fire departments, and the appropriate health care facility. The contingency plan shall contain:

1. A description of the actions facility personnel shall take in the event of various emergency situations;

2. A description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of response personnel responding to an emergency situation; and

3. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as an emergency coordinator for the facility. Where more than one person is listed, one shall be named as primary emergency coordinator and the other shall be listed in the order in which they will assume responsibility as alternates.

G. The applicant shall prepare and submit a detailed plan for closing any regulated medical waste management. Such a plan shall be prepared to reflect the actions required at any point in the life of the facility and at the time of closing the facility. The plan should reflect all steps necessary to isolate the facility from the environment or to remove and dispose of all regulated medical waste and residue in the facility. The closure plan should reflect all actions necessary for facility abandonment or uses other than for regulated medical waste management.

§ 10.7. Effect of the permit.

A. A completed permit for a regulated medical waste management facility permit shall be prepared in detail to establish the construction requirements, monitoring requirements, operating limitations or guides, waste limitations if any, and any other details essential to the operation and maintenance of the facility and its closure. Before receipt of waste by the facility, the applicant must:

1. Notify the department, in writing, that construction has been completed; and submit to the department a letter from a professional engineer licensed to practice in the Commonwealth certifying that the facilities have been completed in accordance with the approved plans and specifications and is ready to begin operation.

2. Arrange for a department representative to inspect the site and confirm that the site is ready for operation.

B. Each facility permitted to accept regulated medical waste requires periodic inspection and review of records and reports. Such requirements shall be set forth in the final permit issued by the department. The permit applicant by accepting the permit, agrees to the specified periodic inspections.

C. Compliance with a valid permit and these regulations during its term constitutes compliance for purposes of enforcement, with the Virginia Waste Management Act. However, a permit may be amended, revoked and reissued, or revoked for cause as set forth in §§ 10.12 and 10.14 of these regulations.

D. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

E. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, Commonwealth or local law or regulations.

F. A permit may be transferred by the permittee to a new owner or operator only if the permit has been revoked and reissued, or a minor amendment made to identify the new permittee and incorporate such other requirements as may be necessary.

G. The permit may, when appropriate, specify a schedule of compliance leading to compliance with these regulations.

1. Any schedules of compliance under subsections G or H of this section shall require compliance as soon as possible.

2. Except as otherwise provided, if a permit establishes a schedule of compliance that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year;

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

3. The permit shall be written to require that no later than 14 calendar days following each interim date and the final date of compliance, a permittee shall notify the director, in writing, of his compliance or noncompliance with the interim or final requirements.

H. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of regulated medical waste, and, in case of treatment or storage facilities, closing pursuant to applicable requirements, or, in case of disposal facilities, closing and conducting post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a specified time for a permit

that has already been issued:

a. The permit may be amended to contain a new or additional schedule leading to timely cessation of activities; or

b. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

2. If the decision to cease conducting regulated activities is made before the issuance of a permit whose terms will include the termination date, the permit shall contain a schedule leading to termination that will ensure timely compliance with applicable requirements.

3. If the permittee is undecided whether to cease conducting regulated activities, the director may issue or amend a permit to continue two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements.

d. Each permit containing two schedules shall include a requirement that, after the permittee has made a final decision, he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

4. The applicant's decisions to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

§ 10.8. Closure care.

A. An owner, operator or permittee intending to close a regulated medical waste management facility shall notify the department of the intention to do so as least 180 calendar days prior to the anticipated date of closing.

B. Closure shall occur in accord with an approved closure plan, which shall be submitted with the permit application documents and approved with the permit issuance. The holder of the permit shall submit a proposed modified closure plan to the department for review and approval as such modifications become necessary during the life of the facility.

C. The department shall inspect all regulated medical waste management facilities that have been closed to determine if the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall order necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the operator of responsibility for corrective action to prevent or abate problems caused by the facility.

§ 10.9. Recording and reporting required of a permittee.

A. A permit may specify:

1. Required monitoring, including type, intervals and frequency, sufficient to yield data that are representative of the monitored activity;

2. Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods, including biological monitoring methods when appropriate; and

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in these regulations.

B. A permittee shall be subject to the following whenever monitoring is required by the permit:

1. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation for at least three years from the sample or measurement date. The director may request that this period be extended.

2. Records of monitoring information shall include:

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

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

c. The date(s) analyses were performed;

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

e. The analytical techniques or methods used; and

f. The results of such analyses.

3. Monitoring results shall be maintained on file for inspection by the department.

C. A permittee shall be subject to the following reporting requirements:

1. Written notice of any planned physical alterations to the permitted facility, unless such items were included in the plans and specifications or operating plan approved by the department, shall be given to the director and approved before such alterations are to occur.

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

3. The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five calendar days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.

4. The permittee shall submit groundwater monitoring reports if required by Part V of these regulations.

D. Copies of all reports required by the permit, and records of all data used to complete the permit application must be retained by the permittee for at least three years from the date of the report or application. The director may request that this period be extended.

E. When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application or in any report to the director, he shall promptly submit such omitted facts or the correct information with an explanation.

§ 10.10. Permit denial.

A. A permit shall be denied if:

1. The applicant fails to provide complete information required for an application;

2. The facility does not conform with the siting standards set forth for the facility in Part V or Part VI of these regulations unless an exemption or variance from the specific siting criteria has been granted;

3. The facility design and construction plans or operating plans or both fail to comply with requirements specified for the proposed type of facility unless an exemption or variance from the specific requirement has been granted;

4. The department finds that there is an adverse impact on the public health or the environment by the design, construction or operation will result; or

5. The applicant is not able to fulfill the financial responsibility requirements specified in the Virginia Waste Management Board financial assurance regulations.

B. Reasons for the denial of any permit shall be provided to the applicant in writing by the director.

§ 10.11. Appeal of permit denial.

A. If the department denies a permit to an applicant, the applicant shall be informed in writing of the decision and the reasons supporting the denial decision. The department shall mail the decision to the applicant by certified mail. Within 30 calendar days of the notification date of denial of the permit, the applicant may make a written request of the director for an informational proceeding or hearing to contest the director's decision. The proceeding or hearing shall be conducted in accordance with § 9-6.14:1 et seq. of the Code of Virginia.

B. The director shall render a decision affirming or modifying the previous denial, and shall notify the applicant of his decision in writing. If the director's decision is adverse to the applicant, the applicant may appeal in accordance with § 9-6.14:1 et seq. of the Code of Virginia.

§ 10.12. Revocation or suspension of permits.

A. Any permit issued by the director may be revoked when any of the following conditions exist:

1. The permit holder violates any regulation or order of the board or any condition of a permit where such violation poses a threat of release of harmful substances into the environment or presents a hazard to human health;

2. The regulated medical waste management facility is maintained or operated in such a manner as to constitute an open dump or pose a substantial present or potential hazard to human health or the environment, or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the director, demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

3. The regulated medical waste management facility because of its location, construction or lack of protective construction or measures to prevent pollution, to constitute an open dump or poses a substantial present or potential hazard to human health or the environment;

4. Leachate or residues from the regulated medical waste management facility used for disposal, storage or treatment of regulated medical waste pose a threat of contamination or pollution of the air, surface waters or groundwater;

5. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted;

6. The owner or operator fails to maintain financial assurance mechanism if required to do so by the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1);

7. As a result of changes in key personnel, the director finds that the requirements necessary for issuance of a permit are no longer satisfied;

8. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or any other report or certification required under this law or under the regulations of the board, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement; or

9. Any key personnel has been convicted of any following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit. In making such determination, the director shall consider:

a. The nature and details of the acts attributed to key personnel;

b. The degree of culpability of the applicant, if any;

c. The applicant's policy or history of discipline of key personnel for such activities;

d. Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

e. Whether the applicant has implemented formal management controls to minimize and prevent the occurrence of such violations; and

f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for violations or other demonstrations of good behavior by the applicant that the director finds relevant to its decision.

B. If the director finds that regulated medical wastes are no longer being stored, treated or disposed at a facility in accordance with department regulations, the director may revoke the permit issued for such facility and reissue it with a condition requiring the person to whom the permit was issued to provide closure and post-closure care of the facility.

If the director is notified by the permittee that the ownership of the facility will be transferred to a new owner or that the operation will be conducted by a new operator, the director will upon receipt of financial assurance documents required by Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1), revoke the original permit and reissue it to the new owner or operator.

C. Except in an emergency, a facility posing a substantial threat to public health or the environment, the director may revoke a permit only after a hearing, or a waiver of a hearing, in accordance with § 9-6.14:1 et seq. of the Code of Virginia.

D. If the director summarily suspends a permit pursuant to an emergency based on subdivision 18 of § 10.1-1402 of the Virginia Waste Management Act, the director shall hold a conference pursuant to § 9-6.14:11 of the Virginia Administrative Process Act, within 48 hours to consider whether to continue the suspension pending a hearing to amend or revoke the permit, or to issue any other appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the permit is suspended. Any person whose permit is suspended by the director shall cease activity for which the permit was issued until the permit is reinstated by the director or by a court.

§ 10.13. Appeal of a revocation of a permit.

If the director suspends, revokes or revokes and reissues a permit, the permittee may appeal in accordance with § 9-6.14:1 et seq. of the Code of Virginia.

§ 10.14. Amendment of permits.

A. Permits may be amended at the request of any interested person or upon the director's initiative. However, permits may only be amended for the reasons specified in subsections E and F of this section. All requests shall be in writing and shall contain facts or reasons supporting the request.

B. If the director decides the request is not justified, he shall send the requester a brief response giving a reason for the decision.

C. If the director tentatively decides to amend he shall prepare a draft permit incorporating the proposed changes. The director may request additional information and may require the submission of an updated permit application. In a permit amendment under subsection E of this section, only those conditions to be amended shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect. During any amendment proceeding the permittee shall comply with all conditions of the existing permit until the amended permit is issued.

D. When the director receives any information, he may determine whether or not one or more of the causes listed for amendment exist. If cause exists, the director may amend the permit on his own initiative subject to the limitations of subsection E of this section and may request an updated application if necessary. If a permit amendment satisfies the criteria in subsection F of this section for minor amendments, the permit may be amended without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

E. The director may amend a permit upon his own initiative or at the request of a third party. The director may amend a permit when there is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment; there is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or groundwater; investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or the amendment is necessary to meet changes in applicable regulatory requirements. Circumstances that may necessitate an amendment include, but are not limited to, the following:

1. When there are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;

2. When there is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or groundwater;

3. When an investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from adverse effects;

4. If the director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be amended accordingly if in the judgment of the director such amendment is necessary to prevent significant adverse effects on public health or the environment;

5. When the standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued;

6. When the director determines good cause exists for amendment of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

7. When an amendment of a closure plan is required and the permittee has failed to submit a permit amendment request within the specified period;

8. When the permittee has filed a request under § 3.6 G of the Financial Assurance Regulations of Solid Waste Facilities (VR 672-20-1) for a variance to the level of financial responsibility or when the director demonstrates under § 3.6 E of those regulations that an upward adjustment of the level of financial responsibility is required; and

9. When cause exists for revocation under § 10.12 and the director determines that an amendment is more appropriate.

F. This subsection provides for permit modification or amendment at the request of the permittee.

1. Minor modifications and permit amendments.

a. Except as provided in subdivisions 1 b and 1 c of this subsection, the permittee may put into effect minor modifications listed in Appendix 10.4 under the following conditions:

(1) The permittee shall notify the director concerning the modification by certified mail or other means that establish proof of delivery at least 14 calendar days before the change is put into effect. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall explain why they are necessary. Along with the notice, the permittee shall provide the applicable information required by §§ 10.3 and 10.4, 10.5, or 10.6.

(2) The permittee shall send a notice of the modification to the governing body of the county, city or town in which the facility is located. This notification shall be made within 90 calendar days after the change is put into effect. For the minor modifications that require prior director approval, the notification shall be made within 90 calendar days after the director approves the request.

b. Minor permit modifications identified in Appendix 10.4 by an asterisk may be made only with the prior written approval of the director.

c. In addition to permit modifications listed in Appendix 10.4, the permittee may request the director to approve a modification that will result in a facility that is more protective of the health and environment than these regulations require. The request for such a minor permit modification will be accompanied by a description of the desired change and an explanation of the manner in which the health and environment will be protected in a greater degree than the regulations provide for.

d. For a minor permit modification, the permittee may elect to follow the procedures in subdivision 2 of this subsection for substantive amendments instead of the minor permit modification procedures. The permittee shall inform the director of this decision in the notice required in subdivision 2 of this subsection.

2. Substantive amendments.

a. For substantive modifications, listed in Appendix 10.4, the permittee shall submit a amendment request to the director that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the modification is a substantive amendment;

(3) Explains why the amendment is needed;

(4) Provides the applicable information required by §§ 10.3 and 10.4, 10.5, or 10.6; and

(5) Provides the proposed facility mailing list containing the names and addresses of persons, organizations, and agencies of local government that might be affected by the proposed amendment. The director may inform the permittee of additional entries he may require.

b. The permittee shall send a notice of the amendment request to all persons on the facility mailing list and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 14 calendar days after the date of submission of the amendment request, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

(1) Announcement of a 60-day comment period, in accordance with subdivision 2 e of this subsection, and the name and address of this department where comments shall be sent;

(2) Announcement of the date, time, and place for a public meeting held in accordance with subdivision 2 d of this subsection;

(3) Name and telephone number of the permittee's contact person;

(4) Name and telephone number of a contact person at the department ;

(5) Location where copies of the amendment request and any supporting documents can be viewed and copied; and

(6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department of Environmental Quality."

c. The permittee shall place a copy of the permit amendment request and support documents in a location accessible to the public in the vicinity of the permitted facility.

d. The permittee shall hold a public meeting not earlier than 30 calendar days after the publication of the notice required in subdivision F 2 b of this subsection and no later than 15 calendar days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

e. The public shall be provided 60 calendar days to comment on the amendment request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department.

f. Administrative procedure.

(1) No later than 90 calendar days after receipt of the notification request, the director will determine whether the information submitted under subdivision 2 a (4) of this subsection is adequate to formulate a decision. If found to be inadequate, the permittee will be requested to furnish additional information within 30 calendar days of the request by the director to complete the amendment request record. The 30-day period may be extended at the request of the applicant.

(2) After the completion of the record, the director will:

(a) Approve the amendment request, with or without changes, and modify the permit accordingly;

(b) Deny the request;

(c) Determine that the amendment request shall follow the procedures in subdivision 3 of this subsection for major amendments if (i) the complex nature of the change requires the more extensive procedures for major amendments; or (ii) the department receives notice by the local governing body that the proposed modification requires a determination by that body of consistency with its ordinances; or

(d) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 calendar days in accordance with subdivision 5 of this subsection.

(3) In making a decision to approve or deny a amendment request, including a decision to issue a temporary authorization or to reclassify a amendment as a major, the director will consider all written comments submitted to the department during the public comment period and will respond in writing to all significant comments in his decision.

g. The director may deny or change the terms of a substantive permit amendment request under subdivision 2 f (2) of this subsection for the following reasons:

(1) The amendment request is incomplete;

(2) The requested amendment does not comply with the appropriate requirements of Part V, Part VI, or other applicable requirements; or

(3) The conditions of the amendment fail to protect human health and the environment.

3. Major amendments.

a. For major modifications listed in Appendix 10.4, the permittee shall submit a amendment request to the director that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the modification is a major amendment;

(3) Explains why the amendment is needed;

(4) Provides the applicable information required by §§ 10.3 and 10.4, 10.5, or 10.6; and

(5) Provides the proposed facility mailing list containing the names and addresses of persons, organizations, and agencies of local government. The director may inform the permittee of additional entries he may require.

b. The permittee shall send a notice of the amendment request to all persons on the facility mailing list and shall publish this notice in a major local newspaper of general circulation. This notice shall be mailed and published within 14 calendar days after the date of submission of the amendment request, and the permittee shall provide to the director evidence of the mailing and publication. The notice shall include:

(1) Announcement of a 60-day comment period, in accordance with subdivision F 2 e of this section, and the name and address of this department where comments shall be sent;

(2) Announcement of the date, time, and place for a public meeting held in accordance with subdivision F 2 d of this section;

(3) Name and telephone number of the permittee's contact person;

(4) Name and telephone number of a contact person at the department;

(5) Location where copies of the amendment request and any supporting documents can be viewed and copied; and

(6) The following statement: "The permittee's compliance history during the life of the permit being modified is available from the Department of Environmental Quality."

c. The permittee shall place a copy of the permit amendment request and support documents in a location accessible to the public in the vicinity of the permitted facility.

d. The permittee shall hold a public meeting no

earlier than 30 calendar days after the publication of the notice required in subdivision F 2 b of this section and no later than 15 calendar days before the close of the 60-day comment period. The meeting shall be held to the extent practicable in the vicinity of the permitted facility.

e. The public shall be provided 60 calendar days to comment on the amendment request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the department.

f. The director shall grant or deny the permit amendment request according to the permit amendment procedures of this section, and other pertinent sections of Part VII.

4. Other amendments.

a. In the case of modifications not explicitly listed in Appendix 10.4, the permittee may submit a major amendment request, or he may request a determination by the director that the modification should be reviewed and approved as a minor or substantive amendment. If the permittee requests that the modification be classified as a minor or a substantive amendment, he shall provide the department with the necessary information to support the requested classification.

b. The director will make the determination described in subdivision F 4 a of this section as promptly as practicable. In determining the appropriate classification for a specific modification, the director will consider the similarity of the modification to other modifications in Appendix 10.4 and the following criteria:

(1) Minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of minor modifications, the director may require prior approval.

(2) Substantive amendments apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(a) Common variations in the types and quantities of the wastes managed under the facility permit,

(b) Technological advancements, and

(c) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit.

(3) Major amendments substantially alter the facility or its operation.

5. Temporary authorizations.

a. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of subdivision F 5 of this section. Temporary authorizations shall have a term of not more than 180 calendar days.

b. (1) The permittee may request a temporary authorization for:

(a) Any substantive amendment meeting the criteria in subdivision F 5 c (2) (a) of this section, and

(b) Any major amendment that meets the criteria in subdivision F 5 c (2) (a) or F 5 c (2) (b) of this section; or that meets the criteria in subdivisions F 5 c (2) (c) and F 5 c (2) (d) of this section and provides improved management or treatment of a regulated medical waste already listed in the facility permit.

(2) The temporary authorization request shall include:

(a) A description of the activities to be conducted under the temporary authorization;

(b) An explanation of why the temporary authorization is necessary; and

(c) Sufficient information to ensure compliance with Part V or Part VI standards.

(3) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven calendar days of submission of the authorization request.

c. The director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director shall find:

(1) The authorized activities are in compliance with the standards of Part V, VII, VIII or IX.

(2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a amendment request:

(a) To facilitate timely implementation of closure or corrective action activities;

(b) To prevent disruption of ongoing waste

management activities;

(c) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(d) To facilitate other changes to protect human health and the environment.

d. A temporary authorization may be reissued for one additional term of up to 180 calendar days provided that the permittee has requested a substantive or a major permit amendment for the activity covered in the temporary authorization, and (i) the reissued temporary authorization constitutes the director's decision on a substantive permit amendment in accordance with subdivisions F 2 f (2) (d) or F 2 f (3) (d) of this section, or (ii) the director determines that the reissued temporary authorization involving a major permit amendment request is warranted to allow the authorized activities to continue while the amendment procedures of subdivision F 3 of this section are conducted.

6. Appeals of permit amendment decisions. The director's decision to grant or deny a permit amendment request under subsection F of this section may be appealed under the case decision provisions of the Virginia Administrative Process Act.

7. Newly defined or identified wastes. The permittee is authorized to continue to manage wastes defined or identified as regulated medical waste under Part III if he:

a. Was in existence as a regulated medical waste management facility with respect to the newly defined or identified regulated medical waste on the effective date of the final rule defining or identifying the waste; and

b. Is in compliance with the standards of Part V, VII, VIII or IX, as applicable, with respect to the new waste, submits a minor modification request on or before the date on which the waste becomes subject to the new requirements; or

c. Is not in compliance with the standards of Part V or VI, as applicable, with respect to the new waste, but submits a complete permit amendment request within 180 calendar days after the effective date of the definition or identifying the waste.

G. The suitability of the facility location will not be considered at the time of permit amendment unless new information or standards indicate that an endangerment to human health or the environment exists that was unknown at the time of permit issuance.

§ 10.15. Duration of permits.

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

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

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

§ 10.16. Existing facilities qualifications.

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

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

APPENDIX 10.1.
DISCLOSURE FORM.

Under § 7(b) of the Privacy Act of 1974, 5 U.S.C. § 552a (note), any government agency that requests an individual to disclose his Social Security Account Number (SSAN) must inform that individual whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

The department is directed to request SSANs by § 10.1-1400 of the Code of Virginia, as specified in the paragraph defining the disclosure statement. The SSAN is used as a secondary identifier by the director when he determines that a criminal records check of the key personnel will be obtained pursuant to subsection D of § 10.1-1405 of the Code of Virginia. The SSAN will then be used to ensure correct identification when information is solicited from outside sources to determine whether the individual named in the records and the individual under consideration are the same or different persons.

The listing of SSANs on the disclosure forms is voluntary. Under Section 7(a) of the Privacy Act, the department cannot deny or revoke a permit or impose any penalty because of an individual's refusal to disclose SSAN. However, the absence of such number as a secondary identifier may delay processing of permit applications because of the additional investigative time that may be necessary to confirm identifications. In addition, there is the possibility that the absence of a SSAN may result in the initial identification of an individual as having a criminal record that actually is that of another person. That, again, may result in delay in the processing of the permit application.

WASTE MANAGEMENT FACILITY PERMIT APPLICANT'S DISCLOSURE STATEMENT

COVER SHEET

Applicant's Name:	Applicant's Interest (Check All Applicable Boxes)
Company Name:	☐ Owner ☐ Operator ☐ Other (Explain):
Address: City: State: Zip: Telephone: ( ) -	

Enter below the names of all key personnel and the starting page number showing more detail. A separate DEQ Form DISC-02 must be completed for each individual listed below

Key Personnel	Page	Key Personnel	Page
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.		1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12.	

COVER SHEET

List all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past ten years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid or hazardous waste.

Agency Name and Permit or License Type	Expiration Date	State

COVER SHEET

List full name and business address of any member of the local governing body or planning commission in which the waste management facility is located or proposed to be licensed, who holds any equity interest in the facility.

Full Name	Business Address

I certify under penalty of the law that the information contained in this disclosure statement and all attachments are, 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 Type or Printed Full Name Title Date

COVER SHEET

Continuation from previous pages:

WASTE MANAGEMENT FACILITY PERMIT APPLICANT'S DISCLOSURE STATEMENT

KEY PERSONNEL

Name:

Social Security Name:

Business Address:

City: State: Zip:

List full name and business address of any entity, other than natural persons, that collects, transports, treats, stores, or disposes of solid or hazardous waste in which the above named person holds an equity interest of five percent or more.

Company Name	Business Address

DEQ Form DISC-02

Page of

Key Personnel

Business Experience:

(Use Continuation Sheet, If Needed)

List all permits or licenses for collection, transportation, treatment, storage, or disposal issued to or held by the person named within the past ten years.

Full Name	Business Address

DEQ Form DISC-02

Page of

Key Personnel

List and explain any notices of violation, prosecution, administrative orders, license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal, or local authority, within the past ten years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid or hazardous waste by the person named. Furnish also an itemized list of all convictions with ten years of any of the crimes listed in Section 10.1-1400, Virginia Waste Management Act, punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction. Use continuation sheets, if necessary.

Key Personnel

Continuation Sheet

APPENDIX 10.2

REQUEST FOR LOCAL GOVERNMENT

CERTIFICATION

REQUEST FOR CERTIFICATION

APPLICANT:

APPLICANT'S MAILING ADDRESS:	DATE OF APPLICATION: TELEPHONE: CONTACT PERSON:
TYPE OF THE FACILITY:	

The applicant is in the process of completing an application for a permit for a regulated medical waste management facility to be issued by the Virginia Department of Environmental Quality. In accordance with Section 10.1-1408.1, Title 10.1, Code of Virginia (1950), as amended, before such a permit application can be considered complete, the applicant has to obtain a certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The undersigned requests that an authorized representative of the local governing body sign the certification below.

SIGNATURE OF THE APPLICANT:

TITLE:

NOTE: The applicant should enclose an appropriate map showing the location of the proposed facility.

Certification

The undersigned certifies that the proposed location an operation of the facility is consistent with all ordinances.

SIGNATURE OF THE AUTHORIZED REPRESENTATIVE:

TYPED OR PRINTED NAME:

TITLE: DATE:

COUNTY, CITY OR TOWN:

DEQ Form CERTIFICATE-01

APPENDIX 10.3

PART A APPLICATION COVER SHEET

PART A APPLICATION COVER SHEET

NAME OF FACILITY:

TYPE OF FACILITY:

NAME OF APPLICANT:

OWNER (If different from applicant):

CONTACT PERSON: PHONE:

MAILING ADDRESS:

SITE LOCATION: (Describe location and attach map showing exact location.)

	YES	NO
KEY MAP ATTACHED?		
NEAR-VICINITY MAP ATTACHED?		
COPY OF DEED or OWNERSHIP DOCUMENT ATTACHED?		

Written notice to adjacent owners or occupants that the undersigned applicant intends to develop a regulated medical waste management facility has been sent. The names and addresses of persons given this notice are shown as an attachment to the form.

TYPED NAME OF APPLICANT:

SIGNATURE OF APPLICANT:

SECTION II - SITING CRITERIA

	YES	NO
SUBJECT TO BASE FLOOD?		
SPRINGS, SEEPS, OR OTHER INTRUSIONS INTO THE SITE?		
PRESENCE OF OPEN DUMP, LANDFILL, LAGOON OR SIMILAR FACILITY?		
PRESENCE OF GAS, WATER, SEWAGE, ELECTRICAL OR OTHER TRANSMISSION LINES ON SITE?		

DISTANCE TO AIRPORT RUNWAY?	
DISTANCE TO REGULARLY FLOWING SURFACE WATER BODY OR RIVER?	
DISTANCE TO WELL, SPRING,OR OTHER GROUNDWATER?	
DISTANCE TO PUBLIC ROAD RIGHT-OF-WAY?	
DISTANCE TO RESIDENCE, SCHOOL, OR RECREATIONAL AREA?	

OTHER CRITERIA APPLICABLE TO THE SITE

APPENDIX 10.4.
CLASSIFICATION OF PERMIT AMENDMENTS

Modifications .....Classification

A. General Permit Provision

1. Administrative and informational changes ... Minor

2. Correction of typographical errors ..... Minor

3. Equipment replacement or upgrading with functionally equivalent components ..... Minor

4. Changes in the frequency of or procedures for monitoring, reporting, sampling by the permittee:

a. To provide for more frequent monitoring, reporting, or sampling, ... Minor

b. Other changes ..... Substantive

5. Schedule of compliance:

*a. Changes in interim compliance dates, with prior approval of the director ..... *Minor*

b. Extension of the final compliance date .... Major

*6. Changes in ownership or operational control of a facility ..... *Minor*

B. General Facility Standards

1. Changes in procedures in the operating plan

a. That do not affect environmental protection afforded ..... Minor

b. Other changes ..... Major

2. Changes in frequency or content of inspection schedules ..... Substantive

3. Changes in the training plan:

a. That do not affect the type or decrease the amount of training given to employees ..... Minor

b. Other changes ..... Substantive

C. Contingency plan:

1. Changes in emergency procedures (i.e., spill or release response procedures) ..... Substantive

2. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed
..... Minor

3. Removal of equipment from emergency equipment list ..... Substantive

4. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan
..... Minor

D. Closure

1. Changes to the closure plan:

*a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the director ..... *Minor*

*b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the director ..... *Minor*

*c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the director ..... *Minor*

*d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the director ..... *Minor*

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix
..... Substantive

2. Creation of a new landfill unit as part of closure .. Major

3. Addition of the new storage or treatment units to be used temporarily for closure activities ..... Major

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan ..... Minor

2. Extension of post-closure care period .. Substantive

3. Reduction in the post-closure care period .... Major

4. Changes to the expected year of final closure, where other permit conditions are not changed
..... Minor

5. Changes in post-closure plan necessitated by events occurring during active life of the facility, including partial and final closure ..... Substantive

I. Incinerators and Energy Recovery Facilities

1. Changes to increase by more than 25% of the

waste feed rate limit authorized in the permit . Major

2. Changes to increase by up to 25% any of the waste feed rate limit authorized in the permit ..... Substantive

3. Modification of the facility in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit ..... Substantive

4. Modification of any inspection or recordkeeping requirement specified in the permit ..... Substantive

5. Incineration of different wastes:

a. If the waste contains wastes regulated under Part III not authorized by the permit or if incineration of the waste requires compliance with different regulatory performance standards than specified in the permit. ..... Major

*b. If the waste does not contain wastes regulated under Part VIII and if incineration of the waste does not require compliance with different regulatory performance standards than specified in the permit ..... *Minor*

J. All Other Facilities

1. Changes to increase by more than 25% of the waste handling capacity authorized in the permit ..... Major

2. Changes to increase by up to 25% of the waste handling capacity authorized in the permit ..... Substantive

3. Modification of the facility in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions, or monitoring requirements specified in the permit ..... Substantive

*4. Modification of any inspection or recordkeeping requirement specified in the permit ..... *Minor*

5. Management of different wastes:

a. If the waste contains wastes regulated under Part III not authorized by the permit or if handling of the waste requires compliance with different regulatory performance standards than specified in the permit. ..... Major

*b. If the waste does not contain wastes regulated under Part VIII and if handling of the waste does not require compliance with different regulatory performance standards than specified in the permit ..... *Minor*

*K. Changes in operation of a facility permitted prior to June 30, 1994, when changes reflect compliance with items in these regulations in substitution of similar items or conditions of the existing permit. ..... *Minor*

PART XI.
VARIANCES AND OTHER PROCEDURES.

Article 1.
Petition for Variance.

§ 11.1. General.

Any person directly affected by these regulations may petition the director to grant a variance from any requirement of these regulations, subject to the provisions of this part. Any petition submitted to the director is also subject to the provisions of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

The director will not accept any petition relating to:

1. Equivalent testing or analytical methods contained in EPA Publication SW-846;

2. Definitions of regulated medical waste contained in Part III of these regulations; and

3. A change in the regulatory requirements that the petitioner is currently violating until such time as the violation has been resolved through the enforcement process.

Article 2.
Variances to Requirements.

§ 11.2. Application and conditions.

The director may grant a variance from any regulation contained in Parts IV through X to a petitioner if the petitioner demonstrates to the satisfaction of the director that:

1. a. Strict application of the regulation to the facility will result in undue hardship that is caused by the petitioner's particular situation, or

b. Technical conditions exist that make a strict application of the regulation difficult to achieve, and

c. The alternate design or operation will result in a facility that is equally protective of the human health and the environment as that provided for in the regulations; and

2. Granting the variance will not result in an unreasonable risk to the public health or the environment.

§ 11.3. Effects of the decisions.

A. When the director renders a decision under this section in accordance with the procedures contained herein, he may:

1. Deny the petition;

2. Grant the variance as requested; or

3. Grant a modified or partial variance.

B. When a modified variance is granted, the director may:

1. Specify the termination date of the variance;

2. Include a schedule for:

a. Compliance, including increments of progress, by the facility with each requirement of the variance; and

b. Implementation by the facility of such control measures as the director finds necessary in order that the variance may be granted.

§ 11.4. Submission of petition.

A. All petitions submitted to the director shall include:

1. The petitioner's name and address;

2. A statement of petitioner's interest in the proposed action;

3. A description of desired action and a citation to the regulation from which a variance is requested;

4. A description of need and justification for the proposed action;

5. The duration of the variance, if applicable;

6. The potential impact of the variance on public health or the environment;

7. Other information believed by the petitioner to be pertinent; and

8. The following statements signed by the petitioner or his authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

B. In addition to the general information required of all petitioners under this article:

1. To be successful the petitioner shall address the applicable standards and criteria.

2. The petitioner shall provide an explanation of the petitioner's particular situation that prevents the facility from achieving compliance with the cited regulation.

3. The petitioner shall provide other information as may be required by the department.

§ 11.5. Petition processing.

A. After receiving a petition that includes the information required in § 11.4, the director will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the director will specify additional information needed and request that it be furnished.

B. The petitioner may submit the additional information requested, or may attempt to show that no reasonable basis exists for the request for additional information. If the director agrees that no reasonable basis exists for the request for additional information, he will act in accordance with subsection C of this section. If the director continues to believe that a reasonable basis exists to require the submission of such information, he will proceed with the denial action in accordance with the Virginia Administrative Process Act (VAPA).

C. After the petition is deemed complete:

1. The director will make a tentative decision to grant or deny the petition;

2. In case that petition may be tentatively denied, the director will offer the petitioner the opportunity to withdraw the petition, submit additional information, or request the director to proceed with the evaluation;

3. Unless the petition is withdrawn, the director will issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement in the locality where the petitioner is located. The director will accept comment on the tentative decision for 30 calendar days.

4. Upon a written request of any interested person, the director may, at his discretion, hold an informal fact finding meeting described in Article 3 (§ 9-6.14:11 et seq.) of the Virginia Administrative Process Act. A person requesting a meeting shall state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The director may in any case decide on his own motion

to hold such a meeting.

5. After evaluating all public comments the director will, within 15 calendar days after the expiration of the comment period:

a. Notify the petitioner of the final decision; and

b. Notify all persons who commented on the tentative decision or publish it in a newspaper having circulation in the locality.

§ 11.6. Petition resolution.

A. In the case of a denial, the petitioner has a right to request a formal hearing to challenge the rejection.

B. If the director grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the director that the petitioner has failed to comply with any variance requirements.

Article 3.
Innovative Treatment Technology Review.

§ 11.7. General.

The requirements for alternate treatment methods contained in Part IX allow, at subdivision 2 d of § 9.2, that new or innovative treatment technologies can be approved for permitting if the director reviews the process and determines that it provides treatment in keeping with these regulations and protects public health and the environment, and if the director establishes appropriate conditions for their siting, design, and operation. This article establishes the criteria, protocols, procedures, and processes to be used to petition the director for review and to demonstrate the suitability of the proposed process for the treatment of regulated medical waste.

§ 11.8. Criteria for microbial inactivation.

A. Inactivation is required to be demonstrated of vegetative bacteria, fungi, all viruses, parasites, and mycobacteria at a 6 Log10 reduction or greater; a 6 Log10. reduction is defined as a 6 decade reduction or a one millionth (0.000001) survival probability in a microbial population (i.e., a 99-9999% reduction).

B. Inactivation is required to be demonstrated of B. stearothermophilus spores or B. subtilis spores at a 4 Log10 reduction or greater; a 4 Log10 reduction is defined as a 4 decade reduction or a 0.0001 survival probability in a microbial population (i.e., a 99.99% reduction).

§ 11.9. Representative of biological indicators.

A. One or more representative microorganisms from each microbial group shall be used in treatment efficacy evaluation.

1. Vegetative Bacteria.

- Staphylococcus aureus (ATCC 6538)

- Pseudomonas aeruginosa (ATCC 15442)

2. Fungi.

- Candida albicans (ATCC 18804)

- Penicillium chrysogenum (ATCC 24791)

- Aspergillus niger

3. Viruses.

- Polio 2 or Polio 3

- MS-2 Bacteriophage (ATCC 15597-B1)

4. Parasites.

- Cryptosporidium spp. oocysts

- Giardia spp. cysts

5. Mycobacteria.

- Mycobacterium terrae

- Mycobacterium phlei

- Mycobacterium bovis (BCG) (ATCC 35743)

B. Spores from one of the following bacterial species shall be used for efficacy evaluation of chemical, thermal, and irradiation treatment systems.

1. B. stearothermophilus (ATCC 7953)

2. B. subtilis (ATCC 19659)

§ 11.10. Quantification of microbial inactivation.

A. Microbial inactivation ("kill") efficacy is equated to "Log10 Kill," which is defined as the difference between the logarithms of number of viable test microorganisms before and after treatment. This definition is equated as:

Log10 Kill = Log10 I(cfu/g) - Log10 R(cfu/g) where:

Log10Kill is equivalent to the term Log10 reduction.

"I" is the number of viable test microorganisms introduced into the treatment unit.

"R" is the number of viable test microorganisms recovered after treatment.

"cfu/g" are colony forming units per gram of waste solids.

B. For those treatment processes that can maintain the integrity of the biological indicator carrier (i.e., ampules, plastic strips) of the desired microbiological test strain, biological indicators of the required strain and concentration can be used to demonstrate treatment efficacy. Quantification is evaluated by growth or no growth of the cultured biological indicator.

C. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator (i.e., chemical inactivation/grinding), quantitative measurement of treatment efficacy requires a two step approach: Step 1, "Control"; Step 2, "Test." The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.

1. Step 1.

a. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.

b. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the microbial inactivation agent (i.e., heat, chemicals).

c. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.

d. Plate recovered microorganism suspensions to quantify microbial recovery. (The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the microbial inactivation agent).

e. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction as specified in § 11.8 (i.e., a 6 Log10 reduction for vegetative microorganisms or a 4 Log10 reduction for bacterial spores). This can be defined by the following equation:

Log10RC = Log10IC - Log10NR

where: Log10RC is greater than or equal to 6 for vegetative microorganisms and is greater than or equal to 4 for bacterial spores and where:

Log10RC is the number of viable "Control" microorganisms (in colony forming units per gram of waste solids) recovered in the nontreated processed waste residue.

Log10IC is the number of viable "Control' microorganisms (in colony forming units per gram of waste solids) introduced into the treatment unit.

Log10NR is the number of "Control" microorganisms (in colony forming units per gram of waste solids) that were not recovered after processing. Log10NR represents an accountability fad-or for microbial loss.

2. Step 2.

a. Use microbial cultures of the same concentration as in Step 1.

b. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the microbial inactivation agent.

c. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.

d. Plate recovered microorganism suspensions to quantify microbial recovery.

e. From data collected from Step 1 and Step 2, the level of microbial inactivation (i.e., "Log10 Kill") is calculated by employing the following equation:

Log10Kill = Log10IT - Log10NR - Log10RT, where:

Log10Kill is equivalent to the term Log10 reduction.

Log10IT is the number of viable "Test" microorganisms (in colony forming units per gram of waste solids) introduced into the treatment unit. Log10IT = Log10IC.

Log10NR is the number of "Control microorganisms (in colony forming units per gram of waste solids) that were not recovered after processing.

Log10RT is the number of viable "Test" microorganisms (in colony forming units per gram of waste solids) recovered in treated processed waste residue.

§ 11.11. Efficacy testing protocols.

A. Methodology employed to determine treatment efficacy of the technology will need to assure required microbial inactivation and assure the protocols are congruent with the treatment method. Protocols developed for efficacy testing shall incorporate, as applicable, recognized standard procedures such as those found in Test Methods for Evaluating Solid Waste, Physical/Chemical Methods and Standard Methods for the Examination of Water and Waste Water.

B. The department shall prescribe those types and compositions of medical wastes that present the most challenge to treatment effectiveness under normal operating conditions of the equipment reviewed.

C. Dependent on the treatment process and treatment efficacy mechanisms utilized, protocols evaluating medical waste treatment systems shall specifically delineate or incorporate, as applicable:

1. Waste compositions that typify actual waste to be processed;

2. Waste types that provide a challenge to the treatment process;

3. Comparable conditions to actual use (i.e., process time, temperature, chemical concentration, Ph, humidity, load density, load volume);

4 Assurances that biological indicators (i.e., ampules, strips) are not artificially affected by the treatment process;

5. Assurances of inoculum traceability, purity, viability and concentration;

6. Dilution and neutralization methods that do not affect microorganism viability;

7. Microorganism recovery methodologies that are statistically correct (i.e., sample collection, number of samples/test, number of colony forming units/plate); and

8. Appropriate microbial culturing methods (i.e., avoidance of microbial competition, the selection of proper growth media and incubation times).

§ 11.12. Technology approval process.

A. To initiate the technology review process the petitioner shall complete and submit the "Petition For Evaluation and Approval of Regulated Medical Waste Treatment Technology Part A: General Information" to the department. The petitioner shall:

1. Provide a detailed description of the medical waste treatment equipment to be tested including manufacturer's instructions and equipment specifications, operating procedures and conditions including, as applicable, treatment times, pressure, temperatures, chemical concentrations, irradiation doses, feed rates, and waste load composition;

2. Provide documentation demonstrating the treatment method meets microbial inactivation criteria and required testing protocols including a detailed description of the test procedures and calculations used in fulfilling required performance standards verifying treatment efficacy, of user verification methodology, and of microbial culturing protocols that ensure traceability, purity and concentration;

3. Provide information on available parametric controls, verifying treatment efficacy and ensuring operator non-interference;

4. Provide documentation of applicable emission controls for suspected emissions;

5. Provide information relating to waste residues including their potential hazards/toxicities and their specific mode of disposal or recycling;

6. Provide documentation providing occupational safety and health assurance; and

7. Provide information on energy efficiency and other potential benefits the treatment technology has to offer to the environment.

B. The petitioner shall demonstrate that all required surrogate pathogens and resistant bacterial endospores are inactivated to criteria specified in §§ 11.8 and 11.10 under the representative challenge waste load compositions.

C. The petitioner shall develop and demonstrate that site approval and user verification testing protocols are workable and valid.

D. The petitioner shall demonstrate where technically practical, the treatment efficacy relationship between biological indicator data and data procured from real-time parametric treatment monitoring equipment.

E. The petitioner shall demonstrate evidence of U.S. EPA pesticide registration for those treatment processes that employ a chemical agent to inactivate microorganisms.

F. Upon completion of items contained in §§ 11.8 through 11.12, the technology approval that results is granted only under the conditions specified in the manufacturer's instructions and equipment specifications, operating procedures and conditions including, as applicable, treatment times, temperatures, pressure, chemical concentrations, irradiation doses, feed rates, and waste load composition. Any significant revisions to these equipment and operating conditions, as warranted relevant to the department, will require reapplication for approval to the department.

§ 11.13. Site approval process.

A. To fulfill treatment efficacy and information requirements for site approval, the equipment user shall:

1. Demonstrate that the equipment cited is the same equipment and process approved by the department as specified in § 11.12.

2. Demonstrate that required resistant bacterial endospores are inactivated as specified in § 11.8 B criteria under typical waste load and department specified challenge compositions;

3. Verify that user verification protocols adequately demonstrate treatment effectiveness; and

4. Verify the treatment efficacy relationship between biological indicator data and data procured from real-time parametric treatment monitoring equipment.

B. The site facility shall provide a written operations plan that includes:

1. The names or positions of the equipment operators;

2. The waste types or categories to be treated;

3. Waste segregation procedures required;

4. Wastes types prohibited for treatment;

5. Equipment operation parameters;

6. Treatment efficacy monitoring procedures;

7. Personal protective equipment requirements,

8. Emergency response plans; and

9. Operator training requirements.

C. The site facility shall submit to the department for their review:

1. Equipment model number and serial number;

2. Equipment specification and operations manual;

3. A copy of the facility's written plan; and

4. Certification documentation of operator training.

D. As a condition of site approval, the department shall have a right to inspect the facility and the right to revoke site approval if health and safety violations are discovered, if permit conditions are not being fulfilled, or if the facility is not adhering to its written plan.

E. Any modifications to the medical waste treatment unit may require re-approval by the director and may involve further efficacy testing.

§ 11.14. User verification.

A. To verify that the medical waste treatment unit is functioning properly and that performance standards are achieved, the petitioner shall:

1. Demonstrate that required resistant bacterial endospores are inactivated to criteria as specified in § 11.8 B under standard operating procedures using protocols that have previously been approved by the department as specified under §§ 11.12 and 11.13.

2. Establish a frequency of biological monitoring; and

3. Document and record all biological indicator and parametric monitoring data.

B. To document treatment efficacy for steam sterilizers and autoclaves, the equipment operator shall:

1. Adopt standard written operating procedures that denote:

a. Sterilization cycle time, temperature, pressure

b. Types of waste acceptable

c. Types of containers and closures acceptable

d. Loading patterns or quantity limitations;

2. Document times/temperatures for each complete sterilization cycle;

3. Use time-temperature sensitive indicators to visually denote the waste has been decontaminated;

4. Use biological indicators placed in the waste load (or simulated load) periodically to verify conditions meet microbial inactivation requirements as specified in § 11.8 B; and

5. Maintain all records of procedure documentation, time-temperature profiles, and biological indicator results.

§ 11.15. Small medical waste treatment devices.

A. All small medical waste treatment devices shall fulfill the requirements necessary for technology approval and shall meet the treatment efficacy requirements as defined in § 11.8.

B. Technology and siting approval are the responsibility of the petitioner. The petitioner shall provide to the department:

1. All information required for technology approval as defined in § 11.12;

2. All information required of site approval for a typical site for which the equipment is designed as defined in § 11.13; and

3. All materials and documents required of the user to ensure proper use, safety, and effective treatment. These materials and documents would include:

a. An operations and maintenance manual;

b. Information on proper use and potential misuse;

c. Treatment efficacy testing instructions;

d. Training/education manual; and

e. Available service agreements/programs.

C. The manufacturer (vendor) shall furnish the user of the treatment device:

1. An operations and maintenance manual;

2. Information on proper use and potential misuse;

3. Treatment efficacy testing instructions;

4. Training/education manual; and

5. Available service agreements/programs.

D. Upon the installation of the treatment device, the manufacturer shall compile a record of the buyer, the location, and the results of onsite challenge testing at time of purchase. This information shall be submitted annually to the department by the petitioner as the notification record of site registrations of equipment installed that previous year.

§ 11.16. Waste residue disposal.

A. Information on the characteristic(s) of all waste residues (liquids and solids), and the mechanism(s) and models) of their disposal shall be provided by the petitioner on the "Evaluation of Medical Waste Treatment Technology: Information Request Form." This information will include:

1. Description of residues (i.e., liquid, solid, shredded, hazardous constituents);

2. Waste designation (i.e. hazardous, special, general);

3. Disposal mechanism (i.e. landfilling, incineration, recycling); and

4. Recycling efforts, if anticipated, (i.e., waste types, amounts, percentages, name and location of recycling effort).

B. Information on waste residue disposal shall be provided by the user facility as required under site approval (§ 11.13). This information shall include:

1. All information requested in § 11.17 A;

2. The site of disposal (name and address);

3. The mechanism of disposal (i.e. landfilling or incineration); and

4. The amounts of residue(s) anticipated to be disposed (e.g., volume and weight per week).

C. If residue(s) are to be recycled the following information shall be provided by the user facility as required under site approval (§ 11.13). This information shall include:

1. The types of waste residue to be recycled;

2. The amounts of waste residue to be recycled;

3. The percentage of the total waste and waste residue to be recycled;

4. The recycling mechanism used; and

5. The name and location of the recycler.

D. Previously untreated medical wastes used in the development and testing of prototypical equipment shall be considered potentially infectious and will be required to be disposed as untreated medical waste.

E. Prototypical equipment testing using non-infectious or previously treated medical waste (i.e., treated by an approved process such steam sterilization) that has been inoculated with recommended surrogate pathogens can be disposed as general solid wastes after verification of treatment effectiveness.

F. All liquid and solid waste residues will be disposed of in accordance with applicable state and local regulations.

§ 11.17. Operator training.

A. To assure proper operation of the treatment process, the manufacturer (vendor) shall provide to the user as part of the treatment equipment purchase an operator training program that will include:

1. A description of all mechanical equipment, instrumentation, and power controls;

2. A description of system's operations including waste types acceptable, loading parameters, process monitors, treatment conditions, and disposal;

3. A description of all parametric controls, their appropriate settings as correlated with biological indicators, and calibration requirements;

4. A description of proper responses, including identification of system upsets (i.e., power failure, jamming, inadequate treatment conditions) and emergency conditions (i.e., fire, explosion, release of chemical or biohazardous materials);

5. A description of personal protective equipment

requirements for routine, abnormal, and emergency operations; and

6. A description of all potential occupational safety and health risks posed by the equipment and its use.

B. The facility shall additionally develop a written treatment equipment operations plan that will include:

1. Responsibility delegation for safe and effective equipment operation to operating personnel;

2. A description of operating parameters that must be monitored to ensure effective treatment:

3. A description of all process monitoring instrumentation and established ranges for all operating parameters;

4. A description of the methods required to ensure process monitoring instrumentation is operating properly; and

5. A description of methods and schedules for periodic calibration of process monitoring instrumentation.

C. The facility shall document and keep on record copies of all training for at least three years.

VA.R. Doc. No. R94-114; Filed October 26, 1993, 10:45 a.m.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VR 672-40-01:1 REGULATED MEDICAL WASTE MANAGEMENT REGULATIONS

PETITION FOR EVALUATION AND APPROVAL OF REGULATED MEDICAL WASTE TREATMENT TECHNOLOGY PART A: GENERAL INFORMATION

Name of Company			
Name of Petitioner (Must be an individual(s) Name)			
Trade Name of Device		Model Number	
Petitioner Address			
City	State	ZIP Code	Petitioner Telephone Number

Department Use Only

Date Application and Questionnaire Received	Date Complete

Note: The review and assessment process will not commence until all information required is submitted by the petitioner and received by the Department.

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

VR 672-40-01:1 REGULATED MEDICAL WASTE MANAGEMENT REGULATIONS

EVALUATION OF MEDICAL WASTE TREATMENT TECHNOLOGY INFORMATION REQUEST FORM

Complete the following questionnaire and return it along with the application. Please include any additional support data that may be applicable. Use additional paper if necessary. Reference with the related section and number(s).

A. GENERAL

A1. Is the alternative treatment technology best suited for onsite use at the point of generation, or is it adaptable for use as a commercial or regional treatment process receiving waste from several generators?

☐ Onsite ☐ Commercial/Regional ☐ Both

A2. Is this treatment technology specified for use at small generator facilities such as physician, dental, or veterinary offices or clinics?

☐ No ☐ Yes

A3. Has this alternative treatment technology been approved/disapproved in any other state? If so, please indicate which states have issued a decision and submit copies of approvals/disapprovals.

B. LEVEL OF TREATMENT

B1. Does the level of microbial inactivation achieved by the treatment process meet the following definition:

"Inactivation of vegetative bacteria, fungi, all viruses, parasites, and mycobacteria at a 6 Log_{10} reduction or greater, and *B. stearothermophilus* spores or *B. subtilis* spores at a 4 Log_{10} reduction or greater."?

☐ Yes ☐ No - If no, specify where the definition is unfulfilled.

C. CHARACTERIZATION OF PROPOSED TREATMENT PROCESS

C1. Please check the appropriate categories that best describe the methods of this proposed technology. Proposed treatment technologies may incorporate several of the categories listed below.

☐ Chemical ☐ Heat ☐ Plasma Arc
☐ Encapsulation ☐ Irradiation ☐ Radiowave
☐ Grinder ☐ Mechanical ☐ Shredder
☐ Hammermill ☐ Microwave
☐ Other(specify) _____

D. WASTE COMPATIBILITY WITH PROPOSED TREATMENT PROCESS

Please identify whether the proposed system is compatible or non-compatible with the following types of waste.

Types of Waste	Compatible	Non-compatible
D1. Cultures and stocks of infectious agents and associated biologicals	☐	☐
D2. Liquid human and animal waste including blood and blood products and body fluids	☐	☐
D3. Pathological waste	☐	☐
D4. Contaminated waste from animals	☐	☐
D5. Sharps	☐	☐

Please refer to the State medical waste regulations for further definition of the medical waste categories and prescribed medical waste management requirements.

D6. What waste characteristics present the most challenge to the proposed treatment process?

☐ Organic materials ☐ Liquids ☐ Density/compaction

☐ Other characteristics (Specify) _____

D7. Describe by composition (i.e., material and percentage) those medical wastes that would provide the most challenge to the proposed technology. Why?

E. BY-PRODUCTS OF THE TREATMENT PROCESS

E1. Please indicate all by-products which may be generated as a result of this alternative treatment technology.

☐ Air Emissions ☐ Heat ☐ Slag ☐ Vapors or Fumes
☐ Ash ☐ Liquid ☐ Smoke
☐ Dust ☐ Odor ☐ Steam
☐ Other (Specify) _____

E2. If any of the above by-products are indicated, how will they be controlled?

E3. If there are no by-products indicated, how was this determined?

E4. Are any of these by-products toxic, biohazardous, etc.? ☐ No ☐ Yes
If yes, explain necessary controls, personal protective equipment, storage, disposal, etc.

F. MICROBIOLOGICAL TEST PROCEDURES

Any proposed treatment method shall be capable of inactivating vegetative bacteria, fungi or yeasts, parasites, viruses, and mycobacteria at a 6 Log_{10} reduction or greater. Bacterial spores shall be inactivated at a 4 Log_{10} reduction or greater. A representative from each microbial group is required for testing.

F1. Listed below are several test organisms which have been used as microbiological indicators to determine the effectiveness of a given treatment method. If there are data to support the inactivation of any of the biological indicators using the proposed treatment process under normal operating conditions, please check the appropriate space next to the indicator.

Vegetative Bacteria
☐ *Staphylococcus aureus* (ATCC 6538)
☐ *Pseudomonas aeruginosa* (ATCC 15442)

Fungi
☐ *Candida albicans* (ATCC 18804)
☐ *Penicillium chrysogenum* (ATCC 24791)
☐ *Aspergillus niger*

Viruses
☐ Polio 2 or Polio 3
☐ MS-2 Bacteriophage (ATCC 15597-B1)

Parasites
☐ *Cryptosporidium spp.* oocysts
☐ *Giardia spp.* cysts

Mycobacteria
☐ *Mycobacterium terrae*
☐ *Mycobacterium phlei*
☐ *Mycobacterium bovis* (BCG)(ATCC 35743)

Bacterial Spores
☐ *B. stearothermophilus* (ATCC 7953)
☐ *B. subtilis* (ATCC 19659)

F. MICROBIOLOGICAL TEST PROCEDURES (CONTINUED)

F1. Were the results certified by an independent, public health or certified testing laboratory?
☐ No ☐ Yes - If so, indicate the name, address, telephone number of the certifying laboratory and attach test protocol and results.

G. CHEMICAL INACTIVATION TREATMENT PROCESSES

G1. If the treatment involves the use of chemical inactivation:
a) What is the name of the active ingredients?
b) What concentrations must be used and maintained?
c) At what Ph is the chemical agent active?
d) What is the necessary contact time?
e) If there is any incompatibility with specific materials and surfaces, specify.

G2. What is the active life of the chemical agent after it has been exposed to air or contaminated medical waste?

G3. Have studies been conducted relative to the long-term effectiveness of the chemical agent while in use?
☐ No ☐ Yes - If yes, please attach a copy of the study and test results.

G4. What health and safety hazards may be associated with the chemical (present and long-term)? Specify
MSDS Attached? ☐ No ☐ Yes

G5. Is the chemical agent registered for this specific use with the Environmental Protection Agency (EPA) Pesticide Registration Division?
☐ No ☐ Yes - If yes, provide the EPA registration number

G6. Is the spent chemical agent classified as a hazardous waste by U.S. EPA (40 CFR Part 261) or by other state criteria?
☐ No ☐ Yes - If yes, specify whether by USEPA or which state

G7. Is an environmental impact study for the chemical agent available?
☐ No ☐ Yes - If yes, attach a copy of this information.

H. ENVIRONMENTAL EFFECTS OF THE TREATMENT PROCESS

H1. Can positive or negative effects on the environment be anticipated from the use and/or disposal of the treated waste from the treatment process?
☐ No ☐ Yes - If yes, specify

H2. What environmental, occupational, and/or public hazards would be associated with a malfunction of the treatment process?
Specify

H3. If the treatment process includes the use of water, steam, or other liquids; how will this waste discharge be handled (i.e., sewer, recycle, etc.)?
Specify

H4. How will the treated waste from this process be disposed of (i.e., landfill, incineration, recycle, etc.)?
Specify

H5. Are the by-products identified as a hazardous waste?
☐ No ☐ Yes - Complete item M1

I. CRITICAL FACTORS OF TREATMENT PROCESS

I1. What are the critical factors that influence the specific treatment technology?
Specify

I2. What are the consequences if these factors are not met?
Specify

I3. Explain the ease and/or difficulty of operation of the medical waste treatment system?
Specify

I4. What type of ongoing maintenance is required in the operation of the treatment system?
Specify
Maintenance Manual Attached? ☐ No ☐ Yes

I5. What emergency measures would be required in the event of a malfunction?
Specify

I6. Are these measures addressed in an emergency plan or in the operations protocol?
☐ No ☐ Yes - If yes, attach a copy

I7. What is the maximum amount of waste to be treated by this process per cycle?

I8. How long is a cycle?

J. QUALITY ASSURANCE AND VERIFICATION OF ADEQUATE TREATMENT

J1. How is the quality assurance of the treatment process addressed?

Specify _____

J2. What is the recommended frequency that a microbiological indicator should be used to confirm effectiveness of the system?

Specify _____

J3. Other than the biological indicators listed in Section F, what other indicators, integrators, or monitoring devices would be used to show that the treatment unit or process was functioning properly? (Please describe and explain.)

J4. How is it determined that the processed waste has received proper treatment? (Check the appropriate item.)

Temperature indicator: ☐ Visual only ☐ Continuous ☐ Both

Pressure indicator: ☐ Visual only ☐ Continuous ☐ Both

Time indicator: ☐ Visual only ☐ Continuous ☐ Both

Chemical concentration indicator: ☐ Visual only ☐ Continuous ☐ Both

☐ Other - Please specify _____

J5. Have the treatment process monitors been correlated with biological indicators to ensure effective and accurate monitoring of the treatment process?

Specify _____

J6. Is there a process monitor calibration schedule established, and at what frequency is calibration performed?

J7. Are the process monitors interfaced to the system's operations to effect proper treatment conditions? Explain.

J8. Are the process monitor controls secured to prevent operator over-ride of the process before treatment is adequately effected? Explain.

K. POST TREATMENT RECYCLING

K1. Has a strategy been developed for the recycling of any part of the treated waste?
☐ No ☐ Yes - If yes, please include additional information regarding the strategy.

L. COMPLIANCE WITH STATE MEDICAL WASTE REGULATIONS

L1. Does your treatment technology meet the requirements of the State's medical waste regulations for medical waste decontamination and disposal? ☐ No ☐ Yes

L2. Which of the following five categories of medical waste will be effectively treated by your system? (Check all that apply.)

	NO	YES
a) Cultures and Stocks	☐	☐
b) Blood and Blood Products and Body Fluids	☐	☐
c) Pathological Waste	☐	☐
d) Sharps	☐	☐
e) Contaminated Animal Wastes	☐	☐

M. INTERAGENCY COORDINATION

M1. Have you inquired from the State's medical waste permit coordinator as to whether any other permits are required? ☐ No ☐ Yes
If yes, please enclose the response and requirements with your application.

NOTE: Local governments may require permits.

N. POTENTIAL ENVIRONMENTAL BENEFITS

N1. Has an energy analysis been conducted on the proposed technology?

☐ No ☐ Yes - If yes, specify and provide results of that analysis.

N2. Has an economic analysis been performed on the proposed technology?

☐ No ☐ Yes - If yes, specify and provide results of that analysis.

N3. How does this treatment technology improve on existing medical waste treatment and disposal methods?

Specify

N4. What is the potential of this proposed technology for:

Waste volume reduction? Specify

Recycling? Specify

O. OTHER RELEVANT INFORMATION AND COMMENTS

(Approvals received from other states, operator safety, competency or training requirements for the users/operators, etc.)

PETITION FOR EVALUATION AND APPROVAL OF REGULATED MEDICAL WASTE TREATMENT TECHNOLOGY PART B: ATTACHMENTS

The general information contained in Part A and this check sheet are a required part of the petition package. These assist the petitioner in submitting the petition and the Department in its review, and they are supplemental to the required documents listed below. The complete petition package consists of a completed Part A form, this Part B check sheet, all the documents listed below, and any other supportive data or information the petitioner wishes to be considered.

☐ Petitioner's submittal certification

☐ Quality Assurance and Quality Control Report

☐ Microbiological testing report

☐ Material Safety Data Sheets

☐ Environmental Protection Agency pesticide registration documents

☐ Maintenance manual

☐ Emergency operations manual

☐ Operations manual

☐ Design plans and specifications

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates: January 5, 1994 - 7 p.m.
January 11, 1994 - 7 p.m.
January 13, 1994 - 7 p.m.
Written comments may be submitted until January 28, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law §§ 62.1-44.15 (5), (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from heavy manufacturing facilities in the most effective, flexible, and economically practical manner while assuring the improvement of water quality in State waters. This proposed regulation will replace emergency regulation (VR 680-14-16) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

Substance: This proposed regulation will (i) define facilities classified as heavy manufacturing which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

Issues: An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the board if the general permit regulation is not adopted to replace the emergency regulation. If facilities that are covered under the emergency regulation do not have the option to reregister for coverage under a new general permit when the emergency regulation expires on June 29, 1994, the facilities would need to submit individual applications. The Department of Environmental Quality (DEQ), Water Division, would have to develop and issue individual permits for each facility at much higher costs. The DEQ would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet these requirements.

Estimated Impacts: Adoption of this general permit regulation to replace the emergency regulation that expires on June 29, 1994, will allow for the continued coverage under a general permit for those facilities covered under the emergency regulation. If this regulation is not adopted, those facilities covered by the emergency regulation general permit will need to file an individual permit application. The individual permit application is more costly and burdensome than completing a Registration Statement which is required under a general permit. In addition, the fee associated with submitting an individual application is higher than that for a Registration Statement.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application two days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge two days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to notify the applicant of coverage under the permit by sending a copy of the permit to the applicant in order to assure consistency and compliance with the storm water regulations.

Summary:

This proposed regulation authorizes storm water discharges associated with industrial activity from heavy manufacturing facilities through the development and issuance of a VPDES general permit. Heavy manufacturing facilities are defined as facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget SIC Manual 1987). The proposed regulation establishes application requirements, requirements to develop and implement a storm water pollution prevention plan, and

procedures for monitoring and reporting.

This proposed regulation will replace emergency regulation (VR 680-14-16), Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities, which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

This proposed regulation will (i) define facilities classified as heavy manufacturing which may be authorized by this state general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (VR 680-14-01) 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 following categories of facilities, which are considered to be engaging in "industrial activity":

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (1992) (except facilities with toxic pollutant effluent standards which are exempted under subdivision 11 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget [OMB] SIC Manual, 1987) and as further defined as heavy manufacturing facilities;

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR Part 434.11(l) (1992) because the performance bond issued to the facility by the appropriate Surface Mining and Control Reclamation Act (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 contaminated 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, benefication, 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 the Resource Conservation and Recovery Act (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 is 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 the Permit Regulation. 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.

"Municipal separate storm sewer" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to surface waters of the Commonwealth; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a Publicly Owned Treatment Works (POTW).

"Permittee" means any owner whose heavy manufacturing facility is covered under this general permit.

"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 that (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 (1922) on either Table II (organic priority pollutants), Table III (certain metals, cyanides and phenols) or Table V (certain toxic pollutants and hazardous substances); (b) are listed as a hazardous substance pursuant to § 311(b)(2)(A) of the Clean Water Act at 40 CFR Part 116.4 (1992); or (c) are pollutants for which Environmental Protection Agency (EPA) has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of Comprehensive Environmental Response, Compensation and Liability Act (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 VPDES program under the Permit Regulation. 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; 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 areas (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. 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 Commonwealth or through a municipal or nonmunicipal separate storm sewer system to surface waters of the Commonwealth.

§ 3. 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.

§ 4. Effective date of the permit.

This general permit will become effective on xxx. This general permit will expire five years from the effective date. Any covered owner is authorized to discharge under this general permit upon compliance with all the provisions of § 5 and the receipt of this general permit. All facilities covered under emergency regulation (VR 680-14-16) VPDES General Permit for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities, shall submit a complete Registration Statement in accordance with § 6 and are authorized to discharge under this general permit upon expiration of the emergency regulation on June 29, 1994, and receipt of this general permit.

§ 5. 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 § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the 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. The owner shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. 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. The director may deny coverage under this general permit to any owner 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. 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 owner 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 owner 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 discharge is in compliance with this permit.

6. The owner shall not be authorized by this general permit to discharge storm water associated with industrial activity that is mixed with nonstorm water discharges unless those nonstorm water discharges are specifically identified as authorized nonstorm water discharges in Part II M 2 of the general permit.

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.

§ 6. Registration Statement; 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 owner shall submit a Registration Statement form provided by the department which shall contain the following information:

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 of direct discharge or Municipal Separate Storm Sewer System (e.g. Clear Creek or unnamed Tributary to Clear Creek):

7. Other Existing VPDES Permit Numbers:

8. Is this facility subject to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) for any § 313 water priority chemicals and is there the potential for any of these chemicals to mix with storm water discharges associated with industrial activity?

9. Does this facility discharge storm water runoff from coal pile storage? Yes No

10. The owner must attach to this Registration Statement the notification (Local Government Ordinance Form) from the governing body of the county, city or town as required by § 62.1-44.15:3 of the Code of Virginia.

11. 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. The owner may terminate coverage under this general permit by filing a complete 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 owner shall submit a Notice of Termination form provided by the department which shall contain the following information:

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 of the facility:

3. Check here if the storm water discharges associated with industrial activity have been eliminated:

4. Check here if the storm water discharges associated with industrial activity are covered by an individual VPDES permit:

5. Facility Owner

Name:

Mailing Address:

City: State: Zip Code: Phone:

6. Facility Location

Name:

Address:

City: State: Zip Code:

7. 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 covered under a VPDES individual permit 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 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:

§ 7. General Permit.

Any owner 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.

General Permit No.: VAR1xxxxx

Effective Date:

Expiration Date:

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 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 in this regulation.

PART I.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Facilities Subject to § 313 of EPCRA.

1. During the period beginning with the date of coverage under this permit 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 § 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Primary Metal Industry.

1. During the period beginning with the date of coverage under this permit 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**
Hexavalent Chromium (dissolved (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 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 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.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Lumber and Wood Products.

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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 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.*

**** 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Coal Pile Storm Water Runoff.

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 three years from the date of coverage under this general permit or the expiration date of the permit, whichever is earlier, 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Chemical and Allied Products (except SIC 283.--Drugs).

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Lime manufacturing facilities.

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Cement manufacturing facilities and cement kilns.

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Ready Mix Concrete.

1. During the period beginning with the date of coverage under the permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Ship and Boat Building and Repairing.

1. During the period beginning with the date of coverage under the permit 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 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 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 (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 and inspection 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 by this permit. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require the 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. The permittee shall submit the monitoring data collected during the term of the permit to the department upon reregistration for coverage under the general permit.

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 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 or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary storm water discharge which enters or could be expected to enter surface waters of the Commonwealth. The permittee shall provide information specified in Part II F 2 a-c 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 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 this permit 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, 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, 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 permittee is unable to collect storm water samples due to adverse climatic conditions, the permittee must retain with the other records and information resulting from monitoring activities as required under Part II C, 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.). Permittees 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 permittee is not subject to the monitoring requirements of Part I of this permit provided the permittee makes a certification for a permitted outfall, on an annual basis, under penalty of law, signed in accordance with Part II G (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 permittee 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 permittee 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. Permittees must also monitor for any additional parameters identified in Part I.

L. Toxicity testing.

The primary purpose of the toxicity testing is to assist in the identification of pollutant sources and in the evaluation of the effectiveness of the pollution prevention practices. Permittees that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below within 180 days after the date of coverage under 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, § 6.1.). Freshwater species must be used for discharges to freshwater water bodies. Due to the non-saline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies. The tests shall be conducted on the invertebrate Ceriodaphnia dubia and the vertebrate Pimephales promelas. All procedures and quality assurance criteria used shall be in accordance with the department's Guidance for Conducting & Reporting the Results of Toxicity Tests in Fulfillment of VPDES Permit Requirements (July 1992).

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, refer to § 11.1.2 of the above-referenced EPA document) is detected on or after three years after the date of coverage under this permit or prior to the expiration date of the permit, whichever is sooner, 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 M 2, 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 Part III D 3 g: discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; lawn watering, 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 by the permittee 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 permittee that is unable to provide the certification required under Part III D 3 g (1) must notify the

department within 180 days after submitting a Registration Statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of nonstorm water discharges; the results of such test or other relevant observations; potential sources of nonstorm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to surface waters of the Commonwealth which are not authorized by a VPDES permit are unlawful, and must be terminated or permittees must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for the 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. Permittees 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 date of coverage under this permit or prior to the expiration date of the permit whichever is sooner; and

b. shall provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit or prior to the expiration date of the permit whichever is sooner.

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 Parts III D 7 (EPCRA Section 313) and III D 8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts III D 7 and III D 8 as expeditiously as practicable, but not later than three years from the date of coverage under this permit or the expiration date of the permit, whichever is sooner.

B. Signature and plan review.

1. The plan shall be signed in accordance with Part II G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part II C (retention of records) of this permit.

2. The permittee shall make plans available upon request to the department, 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 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 Commonwealth or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part III D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing

the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. The 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 Part III D 2 c (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, vehicle and equipment 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 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 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 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. A description of storm water management controls appropriate for the facility, including a schedule for implementing the controls shall be developed. The controls shall be implemented as part of this permit. 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:

a. Good housekeeping. Good housekeeping requires the maintenance, in a clean, orderly manner, of areas which may contribute pollutants to storm water discharges.

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. Identification of areas where potential spills can occur which may contribute pollutants to storm water discharges, and their accompanying drainage points. 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 facility personnel. The necessary equipment to implement a clean up should be available to the appropriate facility personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under Part III D 4 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 actions are taken in response to the inspections. Records of inspections shall be maintained.

e. Employee training. Employee training programs shall be developed to 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. The 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 pollution prevention plan. 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 all outfalls that contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not authorized by Part II M 2 of this permit. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing, the date of evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part II G 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 permittee that is unable to provide the certification required by this paragraph must notify the department in accordance with Part II O (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in Part II M 2 (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, 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 Part III D 2 (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 detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified

facility personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year during the permit term. Such evaluations shall provide:

a. Areas contributing to storm water discharges 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 Part III D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part III D 3 (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 Part III D 4 b of the permit shall be made a part of the storm water pollution prevention plan and retained as required in Part II C. 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 Part II G (signatory requirements) of this permit and retained as required in Part II C.

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 permittee 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 or any other plans required by board regulations as long as such requirements are 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 Parts III D 1 through 4 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:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under Part III D 7 a 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 the 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 these chemicals. Appropriate measures to minimize discharges of Section 313 water priority chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind effects 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 water priority 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 when making and breaking hose connections (such as hose connections, hose reels and filler nozzles); 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 effects, 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 subdivisions 7 b (1), (2), (3) or (4) of this subsection.

(a) Drainage from areas covered by subdivisions 7 b (1), (2), (3) or (4) of this subsection 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 required 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 Part II C.

(6) Facility site runoff from areas other than those covered by subdivisions 7 b (1), (2), (3) or (4) of this subsection. Other areas of the facility (those not addressed in subdivisions (1), (2), (3) or (4) of this subsection, 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, effects of 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 Commonwealth, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the Commonwealth shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with federal, state, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry which could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are used or stored and where there is the potential for these chemicals to mix with storm water discharges, shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation which are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering Certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals which are classified as 'Section 313 water priority chemicals' and where there is the potential for these chemicals to mix with storm water discharges, shall be reviewed by a registered professional engineer and certified to by such professional engineer. A registered professional engineer shall recertify the plan every three years thereafter or as soon as practicable after significant modifications 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 permittee 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 Commonwealth shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Permittees shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than three years from the date of coverage under this permit or the expiration date of this permit, whichever is sooner. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters of the Commonwealth.

E. Notice of Termination.

1. The permittee shall submit a Notice of Termination to the department, that is signed in accordance with Part II G, 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 and the general permit is no longer applicable.

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 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 neither the monitoring nor limitation requirements are 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 § 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 § 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 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:

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.

L. Transferability of permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

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 Code of Virginia. 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. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

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 § 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.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation and in accordance with other sections of this permit (Parts IV N, IV O and IV Q).

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 discharge(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 hearing.

R. When an individual permit may be requested.

Any permittee 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 permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a General Permit is issued which applies to an permittee already covered by an individual permit, such permittee 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 § 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. R94-157; Filed October 27, 1993, 11:23 a.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.

Public Hearing Dates:
January 5, 1994 - 2 p.m.
January 10, 1994 - 2 p.m.
January 11, 1994 - 2 p.m.
Written comments may be submitted until January 26, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law, §§ 62.1-44.15 (5), (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; and 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities in the most effective, flexible, and economically practical manner and to assure the improvement of water quality in state waters. This proposed regulation will replace emergency regulation (VR 680-14-17) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

Substance: This proposed regulation will: (i) define facilities classified as light manufacturing which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard

language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

Issues: An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the department if the general permit regulation is not adopted to replace the emergency regulation. If facilities that are covered under the emergency regulation do not have the option to reregister for coverage under a new general permit when the emergency regulation expires on June 29, 1994, the facilities would need to submit individual applications. The Department of Environmental Quality (DEQ), Water Division, would have to develop and issue individual permits for each facility at much higher costs. The agency would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Estimated Impacts: Adoption of this general permit regulation to replace the emergency regulation that expires on June 29, 1994, will allow for the continued coverage under a general permit for those facilities covered under the emergency regulation. If this regulation is not adopted then those facilities covered by the emergency regulation general permit will need to file an individual permit application. The individual permit application is more costly and burdensome than completing a Registration Statement to be covered under a general permit. The fee associated with submitting an individual application is higher than that for a Registration Statement.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application two days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge two days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to notify the applicant of coverage under the permit by sending a copy of the permit to the applicant in order to assure consistency and compliance with the storm water regulations.

Summary:

This proposed regulation authorizes storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. Light manufacturing facilities are defined as facilities classified as Standard Industrial Classification 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 proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and procedures for monitoring and reporting. This proposed regulation will replace emergency regulation (VR 680-14-17) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

This proposed regulation will: (i) define facilities classified as light manufacturing which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

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 (§ 62.1-44.2 et seq. of the Code of Virginia) and Permit Regulation (VR 680-14-01) 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 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 Surface Mining Control and Reclamation Act (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 contaminated 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 the Resource Conservation and Recovery Act (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 operations, airport deicing operations, or that 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 is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved Publicly Owned Treatment Works (POTW) pretreatment program under the Permit Regulation. 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 subdivision 2 through 10 of this definition and which are further defined as light manufacturing facilities.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to surface waters of the Commonwealth; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a POTW.

"Permittee" means any owner whose light manufacturing facility is covered under this general permit.

"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 that (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 (organic priority pollutants), Table III (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 the Environmental Protection Agency (EPA) has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (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 VPDES program under the Permit Regulation. 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 byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; 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 areas (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, byproducts, 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, byproduct 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 industrial activity as defined in subdivision 11 of the definition of "industrial activity", light manufacturing facilities. 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. 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.

§ 4. Effective date of the permit.

This general permit will become effective on xxx. This general permit will expire five years from the effective date. Any covered owner is authorized to discharge under this general permit upon compliance with all the provisions of § 5 and the receipt of this general permit. All facilities covered under emergency regulation (VR 680-14-17) VPDES General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities, shall submit a complete Registration Statement in accordance with § 6 of this regulation and are authorized to discharge under this general permit upon expiration of the emergency regulation on June 29, 1994, and receipt of this general permit.

§ 5. 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 § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the 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. The owner shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. The owner shall obtain the notification from the governing body of the county, city or town required by § 62.1-44.15:3.

4. The director may deny coverage under this general permit to any owner 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. 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 owner 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 owner 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 discharge is in compliance with this permit.

6. The owner shall not be authorized by this general permit to discharge storm water associated with industrial activity that is mixed with nonstorm water discharges unless those nonstorm water discharges are specifically identified as authorized nonstorm water discharges in Part II M 2 of the general permit.

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.

§ 6. Registration statement; 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 owner shall submit a Registration Statement form provided by the department which shall contain the following information:

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 of direct discharge or Municipal Separate Storm Sewer System (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 and is there the potential for any of these chemicals to mix with storm water discharges associated with industrial activity?

9. Does this facility discharge storm water runoff form coal pile storage? Yes/No

10. The owner 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.

11. 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. The owner may terminate coverage under this general permit 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 owner shall submit a Notice of Termination form provided by the department which shall contain the following information:

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 of the facility:

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated:

4. Check here if the storm water discharges associated with industrial activity are covered by an individual VPDES permit:

5. Facility Owner
Name:
Mailing Address:
City: State: Zip Code:
Phone:

6. Facility Location
Name:
Address:
City: State: Zip Code:

7. 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 covered under a VPDES individual permit 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 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:

§ 7. General permit.

Any owner 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.

General Permit No.: VAR2xxxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM LIGHT MANUFACTURING FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Facilities subject to § 313 of EPCRA.

1. During the period beginning with the date of coverage under this permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oil.

1. During the period beginning with the date of coverage under this permit 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 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Rubber and miscellaneous plastics products.

1. During the period beginning with the date of coverage under this permit 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 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 (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 and inspection 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 by this permit. Such increased frequency shall also be reported.

E. Water quality monitoring.

The director may require the 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. The permittee shall submit the monitoring data collected during the term of the permit to the department upon reregistration for coverage under the general permit.

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 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 or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been

reported.

3. 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 Part II F 2 a-c 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 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 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 this permit 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, 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, 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 permittee is unable to collect storm water samples due to adverse climatic conditions, the permittee must retain with the other records and information resulting from the monitoring activities as required under Part II C, 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, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Permittees 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 permittee is not subject to the monitoring requirements of Part I of this permit provided the permittee makes a certification for a permitted outfall, on an annual basis, under penalty of law, signed in accordance with Part II G (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, 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 permittee 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 permittee 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. Permittees must also monitor for any additional parameter identified in Part I.

L. Toxicity testing.

The primary purpose of the toxicity testing is to assist in the identification of pollutant sources and in the evaluation of the effectiveness of the pollution prevention practices. 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, § 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. The tests shall be conducted on the invertebrate Ceriodaphnia dubia and the vertebrate Pimephales promelas. All procedures and quality assurance criteria used shall be in accordance with the department's Guidance for Conducting & Reporting the Results of Toxicity Tests in Fulfillment of VPDES Permit Requirements (July 1992).

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, refer to § 11.1.2 of the above referenced EPA document) is detected on or after three years after the date of coverage under this permit or prior to the expiration date of the permit, whichever is sooner, 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 Part III D 3 g (1): discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; lawn watering, 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 by the permittee 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 permittee facility that is unable to provide the certification required under Part III D 3 g (1) must notify the department within 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 surface waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or permittees must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for the 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. Permittees 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 shall:

a. Be prepared within 180 days after the date of coverage under this permit or prior to the expiration date of the permit whichever is sooner; and

b. Provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit or prior to the expiration date of the permit whichever is sooner.

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 Parts III D 7 (EPCRA Section 313) and III D 8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts III D 7 and III D 8 as expeditiously as practicable, but not later than three years from the date of coverage under this permit or the expiration date, whichever is sooner.

B. Signature and plan review.

1. The plan shall be signed in accordance with Part II G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part II E (retention of records) of this permit.

2. The permittee shall make plans available upon request to the department 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 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, 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 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 Part III D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who 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. The 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 Part III D 2 c (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 or cleaning areas or both, 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 coverage under 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 coverage under this permit and the present; the location and a description of existing structural and non-structural 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 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. A description of storm water management controls appropriate for the facility, including a schedule for implementing the controls shall be developed. The controls shall be implemented as part of this permit. 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:

a. Good housekeeping. Good housekeeping requires the maintenance, in a clean, orderly manner, of areas which may contribute pollutants to storm water discharges.

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. Identification of areas where potential spills can occur which may contribute pollutants to storm water discharges, and their accompanying drainage points. 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 facility 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 Part III D 4 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 be developed to 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 pollution prevention plan. 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 all outfalls that contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not authorized by Part II M 2 of this permit. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part II G 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 permittee that is unable to provide the certification required by this paragraph must notify the department in accordance with Part II O (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in Part II M 2 (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, 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 Part III D 2 (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 detention/retention devices.

4. Comprehensive site compliance evaluation. Qualified facility personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year 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 Part III D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part III D 3 (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 Part III D 4 b of the permit shall be made a part of the storm water pollution prevention plan and shall be retained as required in Part II C. 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 Part II G (signatory requirements) of this permit and retained as required in Part II C.

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 permittee 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 or any other plans required by board regulations 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 Parts III D 1 through 4 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:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under Part III D 7 a 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 the 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 these chemicals. Appropriate measures to minimize discharges of Section 313 water priority chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, or other equivalent measures.

(2) Material storage areas for Section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind effects 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 water priority 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 effects, 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 a (1), (2), (3) or (4).

(a) Drainage from areas covered by subdivision D 7 a (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 Part II C.

(6) Facility site runoff from areas other than those covered by subdivision D 7 a (1), (2), (3) or (4). Other areas of the facility (those not addressed in subdivision D 7 a (1), (2), (3) or (4)), 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, effects of 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 who 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 modifications 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 permittee 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. Permittees shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than three years from the date of coverage under this permit or the expiration date of this permit, whichever is sooner. 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 permittee shall submit a Notice of Termination to the department, that is signed in accordance with Part II G, 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 and the general permit is no longer applicable.

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 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, 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 to:

1. 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. 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 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 a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

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 Code of Virginia. 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. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

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.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

P. Permit modifications, revocations and reissuances, and termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation and in accordance with Parts IV N, IV O and IV Q of this permit.

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 discharge(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 hearing.

R. When an individual permit may be requested.

Any permittee 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 a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to a permittee already covered by an individual permit, such permittee 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.

VA.R. Doc. No. R94-156; Filed October 27, 1993, 11:20 a.m.

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Title of Regulation: **VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation 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.

Statutory Authority: § 62.1-44.15 (10) of the Code of Virginia.

Public Hearing Dates:
January 5, 1994 - 2 p.m.
January 10, 1994 - 2 p.m.
January 11, 1994 - 2 p.m.
Written comments may be submitted until 4 p.m. on January 26, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law, §§ 62.1-44.15 (5), (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities, landfills, land application sites and open dumps, materials recycling facilities and steam electric power generating facilities in the most effective, flexible, and economically practical manner and to assure the improvement of water quality in state waters. This proposed regulation will replace emergency regulation (VR 680-14-18) Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation 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 which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

Substance: This proposed regulation will (i) define the facilities which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

Issues: An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the department if the general permit regulation is not adopted to replace the emergency regulation. If facilities that are covered under the emergency regulation do not have the option to reregister for coverage under a new general permit when the emergency regulation expires on June 29, 1994, then the facilities would need to submit individual applications. The Department of Environmental Quality (DEQ), Water Division, would have to develop and issue individual permits for each facility at much higher costs. The DEQ would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan and the monitoring and reporting requirements. The proposed regulation allows the greatest flexibility possible for all facilities to easily and efficiently meet the requirements.

Estimated Impacts: Adoption of this general permit regulation to replace the emergency regulation that expires on June 29, 1994, will allow for the continued coverage under a general permit for those facilities covered under the emergency regulation. If this regulation is not adopted then those facilities covered by the emergency regulation general permit will need to file an individual permit application. The individual permit application is more costly and burdensome than completing a Registration Statement to be covered under a general permit. The fee associated with submitting an individual application is higher than that for a Registration Statement.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The federal general permit for storm water discharges associated with industrial activity was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application two days prior to the commencement of the industrial activity. This proposed regulation requires the Registration Statement to be submitted at least 30 days prior to the commencement of industrial activity. This was necessary to allow the staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge two days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to notify the applicant of coverage under the permit by sending a copy of the permit to the applicant in order to assure consistency and compliance with the storm water regulations.

Summary:

This proposed regulation authorizes storm water discharges associated with industrial activity from transportation facilities, landfills, land application sites and open dumps, materials recycling facilities and steam electric power generating facilities through the development and issuance of a VPDES general permit. The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and procedures for monitoring and reporting. This proposed regulation will replace emergency regulation (VR 680-14-18) Virginia Pollutant Discharge Elimination System (VPDES) General Permit

Regulation 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 which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

This proposed regulation will (i) define the facilities which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges associated with industrial activity through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, Material 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 (§ 62.1-44.2 et seq. of the Code of Virginia) and Permit Regulation (VR 680-14-01) 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 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 Surface Mining Control and Reclamation Act (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 contaminated 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, beneficiation, 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 the Resource Conservation and Recovery Act (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 operations, airport deicing operations, 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 is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved Publicly Owned Treatment Works (POTW) pretreatment program under the Permit Regulation. 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.

"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a POTW.

"Permittee" means any owner whose facility is covered under this general permit.

"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 that (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 (organic priority pollutants), Table III (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 the Environmental Protection Agency (EPA) has published acute or chronic water quality criteria.

"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (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 VPDES program under the Permit Regulation. 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 byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; 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 areas (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, byproduct 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 industrial activity subdivisions 5, landfills, land application sites and open dumps; 6 materials recycling facilities; 7 steam electric power generating facilities; and 8 transportation facilities as defined in § 1. 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. 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.

§ 4. Effective date of the permit.

This general permit will become effective on xxx. This general permit will expire five years from the effective date. Any covered owner is authorized to discharge under this general permit upon compliance with all the provisions of § 5 and the receipt of this general permit. All facilities covered under emergency regulation (VR 680-14-18) VPDES General Permit for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities; Landfills, Land Application Sites and Open Dumps; Material Recycling Facilities; and Steam Electric Power Generating Facilities, shall submit a complete Registration Statement in accordance with § 6 of this regulation and are authorized to discharge under this general permit upon expiration of the emergency regulation on June 29, 1994, and receipt of this general permit.

§ 5. Authorization to discharge.

A. 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 § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the 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. The owner shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. 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. The director may deny coverage under this general permit to any owner 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. 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 owner 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 owner 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 discharge is in compliance with this permit.

6. The owner shall not be authorized by this general permit to discharge storm water associated with industrial activity that is mixed with nonstorm water discharges unless those nonstorm water discharges are specifically identified as authorized nonstorm water discharges in Part II M 2 of the general permit.

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.

§ 6. Registration Statement; 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 owner shall submit a Registration Statement form provided by the department which shall contain the following information:

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 of direct discharge or Municipal Separate Storm Sewer System (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 and is there the potential for any of these chemicals to mix with storm water discharges associated with industrial activity? Yes No

9. The owner 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. The owner may terminate coverage under this general permit 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 owner shall submit a Notice of Termination form provided by the department which shall contain the following information:

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 of the facility:

3. Check here if the Storm Water Discharges Associated with Industrial Activity have been eliminated:

4. Check here if the storm water discharges associated with industrial activity are covered by an individual permit:

5. Facility Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

6. Facility Location

Name:

Address:

City: State: Zip Code:

7. 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 covered under a VPDES individual permit 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 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:

§ 7. 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.

General Permit No.: VAR3xxxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM TRANSPORTATION FACILITIES; LANDFILLS, LAND APPLICATION SITES AND OPEN DUMPS; MATERIALS RECYCLING FACILITIES; AND STEAM ELECTRIC POWER GENERATING FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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 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. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Facilities subject to Section 313 of EPCRA.

1. During the period beginning with the date of coverage under this permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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 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.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Active or inactive landfill, land application sites or open dump.

1. During the period beginning with the date of coverage under this permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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**
Hexavalent Chromium (dissolved) (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**
Silver (total recoverable) (ug/l)	NA	NL	1/6M	Grab**
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.

4. A stabilized final cover means a final cover that is consistent with specifications for a final cover system for municipal solid waste landfills developed under Subtitle D of RCRA.

** 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Lead acid batteries.

1. During the period beginning with the date of coverage under this permit 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)				
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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Airports with over 50,000 flight operations per year.

1. During the period beginning with the date of coverage under this permit 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Coal handling sites at coal-fired steam electric power generating facilities.

1. During the period beginning with the date of coverage under this permit 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 Minimum	Maximum	MONITORING REQUIREMENTS 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Automobile junkyards.

1. During the period beginning with the date of coverage under this permit and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water associated with industrial activity from areas at automobile junkyards with any of the following: (a) over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) that are exposed to storm water; (b) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) that are exposed to storm water; or (c) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS Minimum	Maximum	MONITORING REQUIREMENTS 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Oil handling sites at oil fired steam electric power generating facilities.

1. During the period beginning with the date of coverage under this permit 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 (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 and inspection 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 by this permit. Such increased frequency shall also be reported.

E. Water Quality Monitoring.

The director may require the 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. The permittee shall submit the monitoring data collected during the term of the permit to the department upon reregistration for coverage under the general permit.

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, 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 or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case by case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

3. 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 Part II F 2 a-c 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 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 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 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 this permit 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, 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, 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 permittee is unable to collect storm water samples due to adverse climatic conditions, the permittee must retain on site with the other records and information resulting from monitoring activities as required under Part II C, 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.). Permittees 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 permittee is not subject to the monitoring requirements of Part I of this permit provided the permittee makes a certification for a permitted outfall, on an annual basis, under penalty of law, signed in

accordance with Part II G (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, byproducts, 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 permittee 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 permittee 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. Permittees must also monitor for any additional parameter identified in Part I.

L. Toxicity Testing.

The primary purpose of the toxicity testing is to assist in the identification of pollutant sources and in the evaluation of the effectiveness of the pollution prevention practices. 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. The tests shall be conducted on the invertebrate Ceriodaphnia dubia and the vertebrate Pimephales promelas. All procedures and quality assurance criteria used shall be in accordance with the department's Guidance for Conducting & Reporting the Results of Toxicity Tests in Fulfillment of VPDES Permit Requirements (July 1992).

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, refer to § 11.1.2 of the above referenced EPA document) is detected on or after three years after the date of coverage under this permit or prior to the expiration date of the permit, whichever is sooner, 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 Part III D 3 g (1): discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; lawn watering, 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

by the permittee 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 permittee that is unable to provide the certification required under Part III D 3 g (1) must notify the department within 180 days after submitting a Registration Statement to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of nonstorm water discharges; the results of such test or other relevant observations; potential sources of nonstorm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Nonstorm water discharges to surface waters of the state which are not authorized by a VPDES permit are unlawful, and must be terminated or permittees must submit appropriate VPDES permit application forms.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for the 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. Permittees 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 shall:

a. Be prepared within 180 days after the date of coverage under this permit or prior to the expiration date of the permit, whichever is sooner; and

b. Provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit or prior to the expiration date of the permit, whichever is sooner.

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 Parts III D 7 (EPCRA Section 313) and III D 8 (salt storage) shall provide for compliance with the terms of the requirements identified in Parts III D 7 and III D 8 as expeditiously as practicable, but not later than three years from the date of coverage under this permit or the expiration date of the permit, whichever is sooner.

B. Signature and Plan Review.

1. The plan shall be signed in accordance with Part II G (signatory requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part II E (retention of records) of this permit.

2. The permittee shall make plans available upon request to the department 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 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), 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 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 Part III D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated

with industrial activity.

D. Contents of Plan.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who 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. The 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 Part III D 2 c (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 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 coverage under 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 coverage under 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 date of coverage under 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. A description of storm water management controls appropriate for the facility, including a schedule for implementing the controls shall be developed. The controls shall be implemented as part of this permit. 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:

a. Good Housekeeping. Good housekeeping requires

the maintenance, in a clean, orderly manner, of areas which may contribute pollutants to storm water discharges.

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. Identification of areas where potential spills can occur which may contribute pollutants to storm water discharges , and their accompanying drainage points. 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 facility personnel. The necessary equipment to implement a clean up should be available to the appropriate facility personnel.

d. Inspections. In addition to or as part of the comprehensive site evaluation required under Part III D 4 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 be developed to 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 pollution prevention plan. 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 all outfalls that contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not authorized by Part II M 2 of this permit. The certification shall include the identification of potential significant sources of nonstorm water at the site, a description of the results of any test or evaluation for the presence of nonstorm water discharges, the evaluation criteria or testing method used, the date of any testing or evaluation, and the on-site drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part II G 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 permittee that is unable to provide the certification required by this paragraph must notify the department in accordance with Part II O (failure to certify) of this permit.

(2) Except for flows from fire fighting activities, sources of nonstorm water listed in Part II M 2 (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, 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 Part III D 2 (description of potential pollutant sources) of this permit) shal

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 detention/retention devices.

4. Comprehensive Site Compliance Evaluation. Qualified facility personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once per year 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 Part III D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part III D 3 (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 Part III D 4 b of the permit shall be made a part of the storm water pollution prevention plan and retained as required in Part II C. 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 Part II G (signatory requirements) of this permit and retained as required in Part II C.

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 permittee 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 or any other plans required by board regulations 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 Parts III D 1 through 4 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:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled and where there is the potential for these chemicals to mix with storm water discharges, appropriate containment, drainage control or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers or other forms of drainage control to prevent or minimize the potential for storm water run-on to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under Part III D 7 a 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 the 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 these chemicals. Appropriate measures to minimize discharges of Section 313 water priority chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, or other equivalent measures.

(2) Material Storage Areas for Section 313 Water Priority Chemicals Other Than Liquids. Material storage areas for Section 313 water priority chemicals other than liquids which are subject to runoff, leaching, or wind effects 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 water priority 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 when making and breaking hose connections (such as hose connections, hose reels and filler nozzles); 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 effects, 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 a (1), (2), (3) or (4).

(a) Drainage from areas covered by subdivision D 7 a (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 Part II C.

(6) Facility Site Runoff from Areas Other than Those Covered by subdivision D 7 a (1), (2), (3) or (4). Other areas of the facility (those not addressed in subdivision D 7 a (1), (2), (3) or (4), 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 modifications 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. Permittees shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than three years from the date of coverage under this permit or the expiration date of this permit, whichever is sooner. 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 permittee shall submit a Notice of Termination to the department, that is signed in accordance with Part II G, 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 and the general permit is no longer applicable.

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 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, 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 byproduct; 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.

L. Transferability of Permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

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 Code of Virginia. 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. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

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.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

P. Permit Modifications, Revocations and Reissuances, and Termination.

This general permit may be modified, revoked and

reissued, or terminated pursuant to the Permit Regulation and in accordance with Parts IV N, IV O and IV Q of this permit.

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 discharge(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 hearing.

R. When an Individual Permit May be Requested.

Any permittee 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 permittee 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 permittee already covered by an individual permit, such permittee 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.

VA.R. Doc. No. R94-155; Filed October 27, 1993, 11:19 a.m.

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Title of Regulation: **VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:
January 5, 1994 - 2 p.m.
January 10, 1994 - 2 p.m.
January 11, 1994 - 2 p.m.
Written comments may be submitted until 4 p.m. on January 26, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law, §§ 62.1-44.15 (5), (6), (7), (9), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize storm water discharges from construction sites in the most effective, flexible, and economically practical manner and to assure the improvement of water quality in state waters. This proposed regulation will replace emergency regulation (VR 680-14-19) Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges from Construction Sites which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

Substance: This proposed regulation will (i) define storm

water discharges from construction sites which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges from construction sites through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

Issues: An important issue to be considered is the costly and excessive burden that would be imposed on the regulated community and the Department of Environmental Quality (DEQ) if the general permit regulation is not adopted to replace the emergency regulation. If construction sites that are covered under the emergency regulation do not have the option to reregister for coverage under a new general permit when the emergency regulation expires on June 29, 1994, then the construction site owners would need to submit individual applications. The DEQ, Water Division, would have to develop and issue individual permits for each construction site at much higher costs. The DEQ would need additional permit writers if individual permits were issued instead of the general permit. Other issues involve the development and implementation of a storm water pollution prevention plan. The proposed regulation allows the greatest flexibility possible for all construction sites to easily and efficiently meet the requirements.

Estimated Impact: Adoption of this general permit regulation to replace the emergency regulation that expires on June 29, 1994, will allow for the continued coverage under a general permit for those construction sites covered under the emergency regulation. If this regulation is not adopted then those sites covered by the emergency regulation general permit will need to file an individual permit application. The individual permit application is more costly and burdensome than completing a Registration Statement to be covered under a general permit. The fee associated with submitting an individual application is higher than that for a Registration Statement.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The federal general permit for storm water discharges from construction sites was used as a guide for developing this proposed regulation. The federal general permit requires the submittal of an application two days prior to the commencement of the construction. This proposed regulation requires the Registration Statement to be submitted at least 14 days prior to the commencement of construction. This was necessary to allow the staff time to review and approve the Registration Statement and issue the general permit to the registrant. The registrant is not authorized to discharge until a complete Registration Statement has been submitted and a general permit is received from the SWCB. The federal requirements do not require issuance of a storm water general permit to the applicant but authorize an applicant to discharge two days after the application has been submitted. The SWCB believes it is necessary to review all Registration Statements for acceptance and to notify the applicant of coverage under the permit by sending a copy of the permit to the applicant in order to assure consistency and compliance with the storm water regulations.

Summary:

The purpose of this proposed regulation is to authorize storm water discharges from construction sites through the development and issuance of a VPDES general permit. Construction sites are defined as 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. The proposed regulation establishes application requirements and requirements to develop and implement a storm water pollution prevention plan and procedures for monitoring and reporting. This proposed regulation will replace emergency regulation (VR 680-14-19) Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water from Construction Sites which was adopted by the State Water Control Board (SWCB) on June 28, 1993.

This proposed regulation will (i) define storm water discharges from construction sites which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard language for control of storm water discharges from construction sites through the development of a storm water pollution prevention plan; and (iv) set minimum monitoring and reporting requirements.

VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and VR 680-14-01 (Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this regulation:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia

Department of Environmental Quality or his designee.

"Final stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% of the cover for unpaved areas not covered by permanent structures has been established or equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

"Industrial activity" means 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 Surface Mining Control and Reclamation Act (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 contaminated 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 the Resource Conservation and Recovery Act (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 operations, airport deicing operations, 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 is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved Publicly Owned Treatment Works (POTW) pretreatment program under the Permit Regulation. 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.

"Municipal separate storm sewer system" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm

drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) that is not a combined sewer; and (iv) that is not part of a POTW.

"Permittee" means any owner whose construction site is covered under this general permit.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under the Permit Regulation. 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 byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; 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 areas (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, byproducts, 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, byproduct 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 industrial activity subdivision 10, construction activity, as industrial activity is defined in § 1. Construction activities include, but are not limited to, clearing, grading and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. Storm water discharges associated with industrial activity subdivisions 1 through 9 and 11, as previously defined, shall not have coverage under this general permit.

This general permit covers only discharges comprised solely of storm water from construction activities which result in the disturbance of five or more total acres of land area on a site provided that the discharge is through a point source to a surface water of the state or through a municipal or nonmunicipal separate storm sewer system to surface waters of the state.

Storm water discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this permit.

§ 3. 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.

§ 4. Effective date of the permit.

This general permit will become effective on xxx. This general permit will expire five years from the effective date. Any covered owner is authorized to discharge under this general permit upon compliance with all the provisions of § 5 and the receipt of this general permit. All construction sites covered under emergency regulation (VR 680-14-19) VPDES General Permit For Storm Water Discharges from Construction Sites, shall submit a complete Registration Statement in accordance with § 6 of this regulation and are authorized to discharge under this general permit upon expiration of the emergency regulation on June 29, 1994, and receipt of this general permit.

§ 5. 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 § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the Permit Regulation (VR 680-14-01). Currently permitted discharges may be authorized under this general permit after an existing permit expires provided that the existing permit did not establish numeric limitations for such discharges.

2. The owner shall not be authorized by this general permit to discharge to state waters where other board regulation or policies prohibit such discharges.

3. 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. The director may deny coverage under this general permit to any owner whose storm water discharge to state water may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat. In such cases, an individual permit shall be required.

5. Storm water discharges from construction sites that are mixed with a storm water discharge from an industrial activity other than construction may be authorized by this permit where: (i) the industrial activity other than construction is located on the same site as the construction activity; and (ii) storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated concrete plants) are covered by a different VPDES general permit or individual permit authorizing such discharges. The owner shall obtain coverage under this VPDES general permit for the construction activity discharge and a VPDES general or individual permit for the industrial activity discharge.

The owner shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge. The storm water discharge 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 discharge is in compliance with this permit.

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.

§ 6. Registration Statement; Notice of Termination.

A. The owner shall file a complete VPDES general permit registration statement for storm water discharges from construction activities. Any owner proposing a new discharge shall file the registration statement at least 14 days prior to the date planned for commencing the construction activity. Any owner of an existing construction activity covered by an individual VPDES permit who is proposing to be covered by this general permit shall notify the director of this intention at least 180 days prior to the expiration date of the individual VPDES permit and shall submit a complete registration statement 30 days prior to the expiration date of the individual VPDES permit. Any owner of an existing construction activity not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement within 30 days of the effective date of the general permit. The owner shall submit a Registration Statement form provided by the department which shall contain the following information:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM
GENERAL PERMIT REGISTRATION STATEMENT
FOR
STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

1. Construction Site Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

2. Location of Construction Site

Name:

Address:

City: State: Zip Code:

If street address unavailable: Lat. . . . Long

3. Status (Federal, State, Public, or Private)

4. Is Storm Water Runoff discharged to a Municipal Separate Storm Sewer System (MS4)?

Yes No

If yes, operator name of the MS4

5. Receiving Water Body of direct discharge or Municipal Separate Storm Sewer System (i.e. Clear Creek or unnamed Tributary to Clear Creek)

6. Other Existing VPDES Permit Numbers

7. Project Start Date

8. Estimated Project Completion Date

9. Total Land Area of Site (acres)

10. Estimated Area to be Disturbed (acres)

11. Has a storm water pollution prevention plan been prepared in accordance with the requirements of the VPDES General Permit for Storm Water Discharges from Construction Sites?

Yes No

If no, explain

12. Brief Description of Construction Activity

13. The owner 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.

14. Certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

Print Name:

Title:

Signature: Date:

For Department of Environmental Quality Use Only:

Accepted/Not Accepted by: Date:

Basin: Stream Class: Section

Special Standards

B. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated or where the owner of the construction site has changed, the owner of the facility shall submit a Notice of Termination within 30 days after final stabilization has been achieved when he is no longer the owner. The owner shall submit a Notice of Termination form provided by the department which shall contain the following information:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

GENERAL PERMIT NOTICE OF TERMINATION FOR STORM WATER DISCHARGES FROM CONSTRUCTION ACTIVITIES

1. VPDES Storm Water General Permit Number:

2. Check here if you are no longer the owner of the site:

3. Check here if the construction site has undergone final stabilization and the Storm Water Discharges from the Construction Site have been terminated:

4. Construction Site Owner

Name:

Mailing Address:

City: State: Zip Code:

Phone:

5. Location of Construction Site

Name:

Address:

City: State: Zip Code:

If street address unavailable: Lat. . . . Long

6. Certification: "I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time and that all storm water discharges associated with industrial activity from the identified facility that are authorized by a VPDES general permit have been eliminated, or that I am no longer the owner of the construction site. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water in accordance with this 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 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:

§ 7. General permit.

Any owner whose registration statement is accepted by the director or his designee will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the Permit Regulation.

General Permit No.: VAR4xxxxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR STORM WATER DISCHARGES FROM CONSTRUCTION SITES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of construction sites (those sites or common plans of development or sale that will result in the disturbance of five of more acres total land area) with storm water discharges associated with industrial activity from these construction sites are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those where Board regulation or policies prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I. Effluent Limitations and Monitoring Requirements, Part II. Monitoring and Reporting, Part III. Storm Water Pollution Prevention Plan and Part IV. Management Requirements, as set forth herein.

PART I.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

A. Storm water from construction sites.

1. During the period beginning with the date of coverage under this permit and lasting until the permit's expiration date, the permittee is authorized to discharge from point sources, storm water from construction sites.

Such discharges shall be limited and monitored by the permittee as specified below:

NO LIMITATIONS OR MONITORING REQUIRED

2. There shall be no discharge of floating solids or visible foam in other than trace amounts.

PART II.
MONITORING AND REPORTING.

A. Sampling and Analysis Methods.

1. Samples and measurements taken if requested by the director 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 (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; and

6. The results of such analyses and measurements.

7. The date and duration (in hours) of the storm event(s) sampled;

8. The rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; and

9. The duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.

C. Records Retention.

All records and information resulting from the monitoring and inspection activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be made a part of the pollution prevention plan and shall be retained on site for three years from the date of the sample, measurement, report or application or until at least one year after coverage under this permit terminates, whichever is later. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the director.

The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of commencement of construction to the date of final stabilization.

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 by this permit. Such increased frequency shall also be reported.

E. Water Quality Monitoring.

The director may require the 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. The permittee shall submit any monitoring data collected during the term of the permit to the department upon reregistration for coverage under the general permit.

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 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 or the anticipated time when the noncompliance will cease; and

c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect surface waters of the state or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The director may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on surface waters of the state has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter surface waters of the state. The permittee shall provide information specified in Part II F 2 a-c 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 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 an 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 this permit 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 submitted to the director; 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 facility 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 director prior to or together with any separate information, Registration Statement or Notice of Termination to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

H. Prohibition on Nonstorm Water Discharges.

All discharges covered by this permit shall be composed 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 Part III D 5: discharges from fire fighting activities; fire hydrant flushing; waters used to wash vehicles or control dust in accordance with Part III D 2 c (2); potable water sources including waterline flushing; irrigation drainage; lawn watering, routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

I. Releases in Excess of Reportable Quantities.

1. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 (1992) and 40 CFR Part 302 (1992). The discharge of hazardous substances or oil in the storm water discharge(s) from a construction site shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the site. Where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40 CFR Part 117 (1992) or 40 CFR Part 302 (1992) occurs during a 24-hour period, the storm water pollution prevention plan must be modified within 14 calendar days of knowledge of the release. The modification shall provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed by the permittee to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

2. Spills. This permit does not authorize the discharge

of hazardous substances or oil resulting from an on-site spill.

PART III.
STORM WATER POLLUTION PREVENTION PLANS.

A storm water pollution prevention plan shall be developed for the construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from the construction site. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges at the construction site and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance.

1. For construction activities that have begun on or before the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan beginning within 30 days after the effective date of this permit.

2. For construction activities that have begun after the effective date of this permit, the plan shall be prepared and provide for compliance with the terms and schedule of the plan upon submittal of the Registration Statement.

3. For ongoing construction activity involving a change of ownership of property covered by this general permit, the new owner shall accept and maintain the existing storm water pollution prevention plan or prepare and implement a new storm water pollution prevention plan prior to taking over operations at the site.

B. Signature and Plan Review.

1. The plan shall be signed in accordance with Part II G, and be retained on-site at the facility which generates the storm water discharge in accordance with Part II C (retention of records) of this permit.

2. The permittee shall make plans available upon request to the department; a state or local agency approving sediment and erosion plans, grading plans, or storm water management plans; or in the case of a storm water discharge associated with industrial activity which discharges through a municipal separate storm sewer system to the municipal operator of the system.

3. The director 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 require modifications in order to meet the minimum requirements of this permit. Within seven days of such notification the permittee shall make the required changes 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 the surface waters of the state and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part III D 1 of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. The plan shall be amended in accordance with Part III E to identify any new contractor that will implement a measure of the plan.

D. Contents of Plan.

The storm water pollution prevention plan shall include the following items:

1. Site Description. Each plan shall provide a description of pollutant sources and other information as indicated:

a. A description of the nature of the construction activity;

b. A description of the intended sequence of major activities which disturb soils for major portions of the site (e.g. grubbing, excavation, grading);

c. Estimates of the total area of the site and the total area of the site that is expected to be disturbed by excavation, grading, or other activities;

d. An estimate of the runoff coefficient of the site prior to construction and after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

e. A description of existing vegetation at the site;

f. A description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.

g. The name of the receiving water(s) and the ultimate receiving water(s), and areal extent of

wetland acreage at the site.

h. A site map indicating:

(1) drainage patterns and approximate slopes anticipated after major grading activities;

(2) areas of soil disturbance;

(3) the location of major structural and nonstructural controls identified in the plan;

(4) the location of areas where stabilization practices are expected to occur including the types of vegetative cover;

(5) surface waters (including wetlands);

(6) locations where storm water is discharged to a surface water with an outline of the drainage area for each discharge point;

(7) existing and planned paved areas and buildings;

(8) locations of permanent storm water management practices to be used to control pollutants in storm water after construction activities have been completed.

(9) locations of other potential pollution sources as described in subdivision 1 f of this subsection.

Two site maps may be developed, one indicating preconstruction site conditions and the second indicating final site conditions. The two maps should be on the same scale.

2. Controls. Each plan shall include a description of appropriate controls and measures that will be implemented at the construction site. The plan will clearly describe for each major activity identified in the site plan appropriate control measures and the timing during the construction process that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls.

(1) Stabilization Practices. A description of interim and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated shall be included in the plan. Except as provided in Part III D 2 a (1) (a) and (b), stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

(a) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

(b) Where construction activity will resume on a portion of the site within 21 days from when activities ceased (e.g., the total time period that construction activity is temporarily ceased is less than 21 days), then stabilization measures do not have to be initiated on that portion of site by the 14th day after construction activity temporarily ceased.

(2) Structural Practices. A description of structural practices to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

(a) For common drainage locations that serve an area with 10 or more disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the

disturbed area and the sediment basin. For drainage locations which serve 10 or more disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent controls is not attainable, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

(b) For drainage locations serving less than 10 acres, sediment basins or sediment traps or both should be used. At a minimum silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.

b. Storm Water Management. A description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed. Structural measures should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

(1) Such practices may include: storm water detention structures (including dry ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The pollution prevention plan shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed predevelopment levels.

(2) Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a nonerosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

c. Other Controls,

(1) No solid materials, including building materials, garbage, and debris shall be discharged to surface waters of the state, except as authorized by a Section 404 permit.

(2) Where construction vehicle access routes intersect paved public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.

(3) The plan shall ensure and demonstrate compliance with applicable state or local waste disposal, sanitary sewer or septic system regulations.

d. Approved State or Local Plans.

An erosion and sediment control plan that is approved by state or local officials may be used to satisfy the requirements of this permit for the development of a pollution prevention plan if all the requirements of the pollution prevention plan are met by the erosion and sediment control plan. Any erosion and sediment control plans or storm water management plans approved by state or local officials shall be retained with the storm water pollution prevention plan prepared in accordance with this permit. Requirements specified in sediment and erosion site plans or site permits or storm water management site plans or site permits approved by state or local officials that are applicable to protecting surface water resources are, upon submittal of a Registration Statement to be authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit. This provision does not apply to provisions of master plans, comprehensive plans, nonenforceable guidelines or technical guidance documents that are not identified in a specific plan or permit that is issued for the construction site.

3. Maintenance. A description and schedule of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures during construction identified in the site plan.

4. Inspections. Qualified facility personnel shall inspect disturbed areas of the construction site that have not been finally stabilized, and areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter

or exit the site. These inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that is 0.5 inches or greater. Where areas have been finally stabilized such inspections shall be conducted at least once every month.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

b. Based on the results of the inspection, the site description identified in the plan in accordance with Part III D 1 of this permit and pollution prevention measures identified in the plan in accordance with Part III D 2 of this permit shall be revised as appropriate, but in no case later than seven calendar days following the inspection. Such modifications shall provide for timely implementation of any changes to the plan within seven calendar days following the inspection.

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with Part III D 4 b of the permit shall be made and retained as part of the storm water pollution prevention plan in accordance with Part II C of this permit. The report shall be signed in accordance with Part III G of this permit.

5. Nonstorm Water Discharges. Except for flows from fire fighting activities, sources of nonstorm water listed in Part II H 2 of this permit that are combined with storm water discharges from the construction site must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the nonstorm water component(s) of the discharge.

E. Contractors.

1. The storm water pollution prevention plan must clearly identify for each measure identified in the plan, the contractor(s) or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part III E 2 of this permit in accordance with Part II G of this permit. All certifications must be included in the storm water pollution prevention plan.

2. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part III E 1 of this permit shall sign a copy of the following certification statement before conducting any professional service at the site identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of this Virginia Pollutant Discharge Elimination System (VPDES) general permit that authorizes the storm water discharges associated with industrial activity from the construction site identified as part of this certification."

The certification must include the name and title of the person providing the signature in accordance with Part II G of this permit; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

F. Notice of Termination.

1. Where a site has been finally stabilized and all storm water discharges from construction activities that are authorized by this permit are eliminated, the permittee shall submit a Notice of Termination that is signed in accordance with Part II G.

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. 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 limitation requirements are not violated.

B. Adverse Impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) 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.

C. Duty to Halt, Reduce Activity or to Mitigate.

1. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Structural Stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

E. Bypassing.

Any bypass ("Bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited.

F. Compliance With State and Federal Law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under Section 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or other appropriate requirements of the State Water Control Law not related to the activities authorized by this storm water general permit or under authority preserved by Section 510 of the Clean Water Act.

G. Property Rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to Reregister.

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.

J. Right of Entry.

The permittee shall allow authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, pollutant management activities, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;

2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;

3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;

4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and

5. To inspect at reasonable times any collection, treatment, pollutant management activities or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of Permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

L. 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 Code of Virginia. 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. of the Code of Virginia) and § 62.1-44.21 of the Code of Virginia.

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.

M. Permit Modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of Section 307(a) of the Clean Water Act;

3. When the level of discharge of or management of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee;

N. Permit Termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

O. Permit Modifications, Revocations and Reissuances, and Termination.

This general permit may be modified, revoked and reissued, or terminated pursuant to the Permit Regulation and in accordance with Part IV M, IV N and IV P of this permit.

P. 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 discharge(s) is a significant contributor of pollution.

2. Conditions at the operating facility change altering the constituents or characteristics or both 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 hearing.

Q. When an Individual Permit May be Requested.

Any permittee 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 a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

When a general permit is issued which applies to a permittee already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

R. Civil and Criminal Liability.

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

S. Oil and Hazardous Substance Liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

T. Unauthorized Discharge of Pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters: sewage, industrial wastes, other wastes, or any noxious or deleterious substances, or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

VA.R. Doc. No. R94-154; Filed October 27, 1993, 11:17 a.m.

* * * * * * * *

Title of Regulation: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Public Hearing Date: December 16, 1993 - 2 p.m.
Written comments may be submitted until 4 p.m. January 18, 1994.
(See Calendar of Events section for additional information)

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the State Water Control Board (SWCB) to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the SWCB to adopt rules governing the procedures of the SWCB with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the SWCB to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the SWCB to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.20 provides that agents of the SWCB may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the SWCB 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 VPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

Purpose: The purpose of this proposed regulatory action is to adopt a general VPDES permit for the discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, other than fuels. This regulation will replace the emergency regulation adopted by the board on June 26, 1993.

Substance: The proposed regulation delineates the authority and general procedures to be followed in connection with issuing general VPDES permits to operations in the nonmetallic mineral mining industrial category. General permits may be issued for categories of dischargers that: involve the same or similar types of operations; discharge the same or similar types of wastes; require the same effluent limitations or operating conditions; and require the same or similar monitoring. The proposed general permit regulation will establish standard language for the limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. 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. 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. In addition, prior to obtaining coverage under the general permit the owner must have a mining permit issued by the Virginia Division of Mineral Mining, or by an associated waivered program administered by a locality or other state agency.

Issues: The lack of public participation at the time an individual operation is covered under a general permit was raised during the public comment period on the Notice of Intented Regulatory Action. Although this lack of

public notice is standard procedure for all general permits, the commenter felt that the public should have a right to comment not only at the time the general permit is adopted, but also every time a facility is added to it.

Members of the regulated community made comments on the earlier rulemaking which were considered in drafting this proposed regulation. The content of this regulation is essentially the same as the emergency regulation of the same name adopted by the SWCB on June 26, 1993.

Impact: There are approximately 90 establishments currently permitted under the individual VPDES permit program which may qualify for this proposed general permit. Adoption of this regulation will allow for the streamlining of the permit process for the covered discharges. Coverage under the general permit would reduce the paper work, time and expense of obtaining a permit for the owners and operators in this category. The limitations and conditions in the general permit will be similar to those in individual permits currently issued to these operations.

The fee for coverage under the proposed general permit would be $200, while the fee for an individual permit for these facilities could be as much as $3,500. Adoption of the proposed regulation would also reduce the staff resources needed by the Department of Environmental Quality for permitting these discharges.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The proposed general permit for nonmetallic mineral mining operations contains effluent limits not included in applicable federal technology based limits. However, the general permit effluent limits are no more stringent than individual VPDES permits issued for this category of discharger.

Summary:

The State Water Control Board intends to adopt a general VPDES permit for the nonmetallic mineral mining industrial category. This proposed regulatory action is needed in order to establish appropriate and necessary permitting of discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, except fuels. This general permit would regulate discharges of process wastewater, mine pit dewatering discharges and storm water discharges from qualified operations in this industrial group. The general permit includes provisions for effluent limitations, monitoring and reporting as well as storm water pollution prevention plans and management requirements. This regulation will replace the emergency regulation adopted by the board on June 26, 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 (§ 62.1-44.2 et seq. of the Code of Virginia), 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, 1455, 1459, and 1499 (Office of Management and Budget (OMB) SIC Manual, 1987).

"Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

"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 owner is required to report pursuant to the Emergency Planning and Community Right to Know Act (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 VPDES program under VR 680-14-01. 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 byproducts used or created by the mineral mine; material handling sites; refuse sites; sites used for the application or disposal of process

wastewaters; 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 paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct 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, 1455, 1459, and 1499, except as specified in this section. 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, and oil and gas extraction.

§ 3. 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.

§ 4. Effective date of the permit.

This general permit will become effective on... . This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of § 5 and the receipt of this general permit.

§ 5. Authorization to discharge.

A. 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 § 6, files the required permit fee, complies with the effluent limitations and other requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES Permit Regulation.

2. 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. 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. 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 Department of Mines, Minerals and Energy, 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. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement.

B. 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.

C. 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.

§ 6. 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 Owner: (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 Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waivered program) under the provisions and requirements of Title 45.1 of the Code of Virginia. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement.

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:

Signature(s): Date:

Name of person(s) signing above: (printed or typed)

(printed or typed)

Title(s):

For Department 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. Coverage under this general permit may be terminated by the permittee 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, 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 Permi

Number:

2. Reason for Termination Request (Choose one):

a. The discharges associated with industrial activity have been eliminated:

b. 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:

c. 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 the mineral mining permit approved by the Virginia Department of Mines, Minerals, and Energy, 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, 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):

§ 7. 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:

Expiration Date:

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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, 1455, 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 Department of Mines, Minerals and Energy, 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. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement. 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, 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.
EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

A. Effluent limitations and monitoring requirements.

1. During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge process waste water, storm water and effluent from mine pit dewatering. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): at the point of discharge, prior to entering state waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Average	Maximum/Minimum	Frequency	Sample Type
Flow (MGD)	NL	NL	NA	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 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 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, when the mineral mining permit approved by the Virginia Department of Mines, Minerals and Energy, 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 mineral mining permit is modified or reissued in any way that would affect the outfall location or the characteristics of a discharge covered by this general permit. Government owned and operated mines without mining permits shall submit the registration statement whenever outfall location or characteristics 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 Clean Water Act then applicable.

7. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other waste resulting from the purchase, sale, mining, extractio

transport, preparation, or storage of raw or intermediate materials, final product, byproduct 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 shall:

a. Be prepared within 180 days after the date of coverage under this permit; and

b. Provide for implementation and compliance with the terms of the plan within 365 days after the date of coverage under this permit.

2. The plan for any facility where industrial activity commences on or after the date of coverage under 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 Part III G (signatory requirements), and be retained on-site at the facility covered by this permit in accordance with Part III C (retention of records) of this permit. When there are no on-site buildings or offices in which to store the plan, it shall be kept at the nearest company office.

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 Part II D 2 (description of potential pollutant sources) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity.

D. Contents of plan.

The plan shall include, at a minimum, the following items:

1. Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

2. Description of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(1) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part II D 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance, vehicle and equipment 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 non-structural 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 require

under Part II D 4 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, 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 Part II D 2 (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 Part II D 2 (description of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II D 3 (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 Part II D 4 b of this permit shall be made and retained as part of the storm water pollution prevention plan as required in Part III C. 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 Part III G (signatory requirements) of this permit and retained as required in Part III C 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, Best Management Practices (BMP) Programs otherwise required by a VPDES permit for the facility or any other plans required by the board's regulations 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 promulgated at 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.

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;

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 once per year, on or before January 10.

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 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 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 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 ha

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 Part III F 2 a-c 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 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, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities, or (vi) flooding or other acts of nature.

If the department's 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 subdivison 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 with the discharge monitoring report an explanation 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.

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 of pollutants.

1. Any permittee proposing a new discharge shall submit a registration statement at least 60 days prior to commencing erection, construction, or expansion or employment of new processes at any facility. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. All discharges 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 the discharge of new or increased pollutants. The discharge 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 which represents a significant increase in the discharge of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works, from an establishment, treatment works, or discharge(s), if such establishment, treatment works, or discharge(s) were discharging or has the potential to discharge pollutants to state waters;

b. Any substantial change, whether permanent or temporary, in the volume or character of pollutants being introduced into such treatment works by an establishment, treatment works, 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 Clean Water 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 times the maximum concentration value reported for that pollutant in the registration statement; or

(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; (ii) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged

from such treatment works; 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 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, 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 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, and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities 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 shall be carried out in such a manner that the monitoring and limitation requirements are not violated; and

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 promptly at least 10 days prior to the bypass. After considering its adverse effects the 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 down-time. However, if a bypass occurs during normal periods of equipment down-time, 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 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 Part IV F 1 above 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 Part II F; 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, 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, 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. 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 permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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 Code of Virginia. 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).

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee; and

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 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; or

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 permittee 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 permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an permittee already covered by an individual permit, such permittee 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" (Part IV F), and "upset" (Part IV G) 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. R94-153; Filed October 27, 1993, 11:15 a.m.

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Title of Regulation: **VR 680-14-22. Virginia Pollution Abatement General Permit for Intensified Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:
January 5, 1994 - 7 p.m.
January 11, 1994 - 7 p.m.
January 13, 1994 - 7 p.m.
Written comments may be submitted until January 28, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law, §§ 62.1-44.15 (7), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize pollutant management activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. The VPA permit program authorizes the pollutant management activities at animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater or sludges. An intensified animal feeding operation is one at which less than or equal to 1,000 animal units but more than 300 animal units are confined.

Substance: This proposed regulation will: (i) define the operations which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard criteria for the design and operation of the treatment works; and (iv) set minimum monitoring and reporting requirements.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants from intensified animal feeding operations is necessary. An important issue to be considered is the continued costly and excessive burden imposed on the regulated community and the department if the general permit regulation is not adopted. The only other option would be to continue to require the submittal of individual applications and the issuance of individual permits for each facility at much higher costs. Other issues involve the development of a Nutrient Management Plan to control the land application of waste, compliance with the criteria for the treatment works and storage facilities, and the monitoring and reporting requirements.

Impact: The permit regulation requires permit applications from intensified animal feeding operations for their pollution management activities. In Virginia there are several hundred facilities that may be required to submit a permit application under the VPA program. As required by this regulation, any facility which intends to be covered under a general permit must submit a complete registration statement, develop a Nutrient Management Plan, comply with the standard criteria for the design and operation of the treatment works, and perform minimum monitoring and reporting. Facilities with specific types of storage facilities may have additional monitoring requirements.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The VPA permit program authorizes the pollutant management activities at animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater or sludges. This is a state adopted program and there are no applicable federal requirements.

Summary:

The Virginia Pollution Abatement (VPA) permit program authorizes the pollutant management activities at intensified animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater and sludges. All pollutant management activities are required to maintain no point source discharge of pollution to state waters except in the case of a 25-year, 24-hour or greater storm event. An intensified animal feeding operation is one at which less than or equal to 1,000 animal units but more than 300 animal units are confined.

The purpose of this proposed regulation is to authorize the management of pollutants or activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a general permit. The proposed regulation establishes the procedures for submitting a registration statement to obtain coverage under the general permit, establishes the standard criteria for the design and operation of the treatment works for waste storage, treatment or recycle and for the land application of wastewater or sludges and sets minimum monitoring and reporting requirements. The

Department of Environmental Quality will administer this program. Upon receipt of a complete registration statement, the applicant will be notified of coverage and will receive a copy of the general permit. The general permit will authorize the pollutant management activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle.

VR 680-14-22. Virginia Pollution Abatement General Permit for Intensified Animal Feeding Operations for Swine, Dairy, and Slaughter and Feeder Cattle.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (VR 680-14-01) 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.

"Permittee" means the owner whose intensified animal feeding operation for swine, dairy or slaughter and feeder cattle is covered under this general permit.

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

§ 2. Purpose.

This general permit regulation governs the pollutant management activities of animal wastes at intensified animal feeding operations for swine, dairy, and feeder and slaughter cattle. These intensified animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of wastewater or sludges.

§ 3. 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.

§ 4. Effective date of the permit.

This general permit will become effective on XXX. This general permit will expire 10 years from the effective date. Any covered owner is authorized to manage pollutants, that are not point source discharges to state waters, under this general permit upon compliance with all the provisions of §§ 5 and 6 and the receipt of this general permit.

§ 5. Authorization to manage pollutants.

Any owner governed by this general permit is hereby authorized to manage pollutants at intensified animal feeding operations for swine, dairy, and slaughter and feeder cattle provided that the owner files and receives acceptance, by the director, of the registration statement of § 6, complies with the requirements of § 7, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the Permit Regulation. Currently permitted operations may be authorized under this general permit after an existing permit expires provided that the criteria of the general permit are met.

2. The operation of the facilities of the owner shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater except in the event of a 25-year, 24-hour or greater storm event. Domestic sewage or industrial waste shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Industrial Waste-No Discharge (IW-ND) Certificate must attach to the registration statement notification from the governing body of the county, city or town in which the activities are to take place that the location and operation of the facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq.) of Title 15.1 of the Code of Virginia.

4. A Nutrient Management Plan (NMP) for the facility must be approved by the Department of Conservation and Recreation (DCR), Division of Soil and Water Conservation (DSWC) prior to the submittal of the registration statement. The owner of the pollutant management activities shall attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.

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.

§ 6. Registration statement.

The owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at intensified animal feeding operations for swine, dairy, and slaughter and feeder cattle in accordance with this regulation.

Any owner proposing a new pollutant management activity shall file a complete registration statement at least 30 days prior to the date planned for commencing erection or construction of new processes at any site. There shall be no operation of said facilities prior to coverage under a permit. Any owner with an existing pollutant management activity covered by an individual VPA permit who is proposing to be covered by this general permit shall file a complete registration statement at least 180 days prior to the expiration date of the individual VPA permit.

The required registration statement shall be in the following form:

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA POLLUTION ABATEMENT
GENERAL PERMIT REGISTRATION STATEMENT
FOR INTENSIFIED ANIMAL FEEDING
OPERATIONS FOR SWINE, DAIRY, AND
SLAUGHTER AND FEEDER CATTLE

1. Facility Name:

Address:

City:

State: Zip Code:

2. Owner Name:

Address:

City:

State: Zip Code:

Phone:

3. Operator Name:

Address:

City:

State: Zip Code:

Phone:

Facility Contact:

Phone:

Best Time to Contact (day time):

4. Does this facility have an existing VPA permit or IW-ND Certificate?

Yes/No

If yes, list the existing VPA Permit Number or IW-ND Certificate Number:

5. Indicate the maximum number and average weight of the type(s) of animal which will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Dairy Cattle		
Slaughter and Feeder Cattle		
Swine		

6. Indicate the number and type of waste storage facilities at the site.

No.	Type	Existing	Proposed
	Earthen storage basin		
	Clay Lined		
	Synthetic Liner		
	Concrete Tank		
	Steel Tank		

7. List any waste other than manure (e.g., wash down, dairy parlor waste or sewage) which may be discharged to the storage facility:

8. Will any of the waste generated at your facility be land applied?

Yes/No

9. Are all the land application sites owned by the applicant?

Yes/No

If No, complete page 4 of this Registration Statement for each nonapplicant land owner on whose property animal waste from this facility will be applied.

10. The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or IW-ND Certificate must attach to the registration statement notification from the governing body of the county, city or town in which the activities are to take place that the location and operation of the facility are consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq.) of Title 15.1 of the Code of Virginia.

11. The owner of the pollutant management activities must attach to the registration statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient

Management Plan.

12. 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:

AUTHORIZATION TO LAND APPLY WASTE

(Land Owner Must Sign and Date This Approval)

As land owner, I authorize..... to land apply animal waste to my property in accordance with the requirements of the VPA General Permit for Intensified Animal Feeding Operations. This authorization will remain in effect until such time as I notify the Department of Environmental Quality, Water Division in writing that this authorization has been withdrawn.

PRINT NAME:

SITE LOCATION:

PHONE:

DATE:

SIGNATURE:

§ 7. General permit.

Any owner 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.

General Permit No.: VAG000xxx

Effective Date:

Expiration Date:

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR INTENSIFIED ANIMAL FEEDING OPERATIONS FOR SWINE, DAIRY, AND SLAUGHTER AND FEEDER CATTLE

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of intensified animal feeding operations for swine, dairy, and slaughter and feeder cattle are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement, supporting data submitted to the Department of Environmental Quality, Water Division, this cover page, Part I - Management and Monitoring Requirements, Part II - Monitoring and Reporting, and Part III - Management Requirements, as set forth herein.

PART I.
MANAGEMENT AND MONITORING REQUIREMENTS.

A. Management 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 manage pollutants at the permitted site.

2. Groundwater monitoring wells shall be installed at new earthen waste storage facilities located east of Interstate 95 including the eastern shore prior to any waste being placed in the storage facility. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility. One data set shall be collected from each well prior to any waste being placed in the storage facility. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located in the state.

4. In accordance with A 2 and A 3 above, the ground water shall be monitored by the permittee at the monitoring wells as specified below:

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	1/6 months	Measures
Ammonia Nitrogen	NL	mg/l	1/6 months	Grab
Nitrate Nitrogen	NL	mg/l	1/6 months	Grab
pH	NL	SU	1/6 months	Grab
Conductivity	NL	umhos/cm	1/6 months	Grab

NL = No limit, this is a monitoring requirement only.

5. The static water level shall be measured prior to bailing well water for sampling. At least three well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

6. Soil monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.

7. The soils at the facility shall be monitored by the permittee as specified below:

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/year	Composite
Phosphorus	NL	ppm	1/year	Composite
Potash	NL	ppm	1/year	Composite
Calcium	NL	ppm	1/year	Composite
Magnesium	LN	ppm	1/year	Composite
Nitrate	LN	ppm	1/year	Composite

NL = No limit, this is a monitoring requirement only.

8. Soil monitoring should be conducted at a depth of between 0-6". The Nitrate test is required only on those sites planted in corn or small grains at a soil depth of 0-12".

9. Waste monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.

10. The waste at the facility shall be monitored by the permittee as specified below:

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	ppm	1/year	Composite
Ammonia Nitrogen	NL	ppm	1/year	Composite
Total Phosphorus	NL	ppm	1/year	Composite
Total Potassiumv	NL	ppm	1/year	Composite
Calcium	NL	ppm	1/year	Composite
Magnesium	NL	ppm	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

11. All monitoring data collected as required by Part I A shall be maintained on site in accordance with Part II C and submitted upon request and during the reissuance process with the registration statement.

B. Other requirements or special conditions.

1. There shall be no discharge of pollutants to surface waters from this operation except in the case of a 25-year, 24-hour or greater storm event. The operation of the facilities of the owner permitted herein shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law.

2. Any and all 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, byproduct or wastes, shall be handled, disposed of, or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters, except as expressly authorized.

3. The waste storage facilities shall be designed and operated to prevent point source discharges of pollutants to state waters except in the case of a 25-year, 24-hour or greater storm event. Adequate waste storage capacity must be present to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste. The minimum storage capacity requirements shall be based upon the approved nutrient management plan.

4. New waste storage facilities shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

5. New earthen waste storage facilities shall be constructed with a 2-foot separation distance between the bottom of the storage facility and the seasonal high water table.

6. For new earthen waste storage facilities, the soils used as lagoon liners shall be capable of achieving a maximum coefficient of permeability of 1 x 10-6 cm/sec or less throughout the impoundment sides and bottom after compaction at or up to 4 percent above the optimum moisture content to at least 95% Standard Proctor Density. Total soil liner thickness shall be one foot after compaction of two separate lifts of equal thickness. The final permeability rate shall be verified by a professional engineer or a soils laboratory. Should a synthetic liner be chosen, the liner thickness shall not be less than 20 mils and shall be compatible with the waste, and be appropriately protected from puncture both below and above the liner. Written certification ensuring lagoon liner integrity and proper installation shall be made, prior to the waste storage facility being placed in operation, by a liner manufacturer or a professional engineer and shall be maintained on site.

7. All waste storage facilities shall maintain a minimum freeboard of two feet at all times. Should the two-foot freeboard not be maintained, the permittee shall immediately notify the department describing the problem and the corrective measures taken. Within five days of the notification, the permittee shall submit a written statement of explanation and corrective measures.

8. The owner of a new animal feeding operation shall develop an Operations and Maintenance (O & M) Manual for the treatment works/pollutant management system permitted herein prior to operation of the system. The owner of an existing animal feeding operation shall develop the O & M Manual within 90 days of the date of coverage under this permit. The O & M Manual shall, at a minimum, contain the following information:

a. Introduction;

b. Waste treatment processes including storage, transmission and distribution system of the land application system;

c. Specific operation and maintenance information of each process discussed in item b above;

d. Schedules of operation and maintenance;

e. Sampling and testing protocols; and

f. Recordkeeping.

The permittee shall operate the treatment works/pollutant management system in accordance with the O & M Manual which becomes an enforceable part of the permit. Any changes in the practices and procedures shall be documented and made a part of the O & M Manual. The revised manual shall become an enforceable part of the permit. The O & M Manual shall be maintained on site and made available to department personnel upon request.

9. The "Nutrient Management Plan" (NMP) approved by the Department of Conservation and Recreation (DCR) shall be implemented, maintained on site and made available to department personnel upon request. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation - assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

10. Animal waste/wastewater shall not be applied to soils which are saturated by previous precipitation events, or to ice or snow covered or frozen ground.

11. Wastewater shall not be applied by a spray irrigation system at rates that exceed 0.25 in/hr, one in/day and two in/week, unless alternate rates have been specified by the approved Nutrient Management Plan.

12. At no time shall animal waste/wastewater be surface applied by a spreader at a hydraulic loading rate greater than 14,000 gal/AC (0.5 inches depth) in a single application procedure unless alternate rates have been specified by the approved Nutrient Management Plan.

13. The application of animal waste together with any other source of Plant Available Nitrogen (PAN) shall not exceed the agronomic loading rate for the crops grown on each site in accordance with the approved Nutrient Management Plan. PAN calculations shall be made using the results from the most recent waste monitoring period or the facilities' long-term average waste monitoring results.

14. Buffer zones shall be maintained as follows:

a. Distance from improved roadways ..... 25 feet

b. Distance from occupied dwellings ..... 200 feet

c. Distance from water supply wells or springs 100

feet

d. Distance from surface water courses
(by surface application) ..... 50 feet
(by subsurface injection) ..... 25 feet

e. Distance from property lines
(by surface application) ..... 25 feet
(subsurface injection) ..... 25 feet

f. Distance from rock outcropping
(except limestone) ..... 25 feet

g. Distance from limestone outcroppings ... 50 feet

h. Distance from artificial agricultural drainage ditches whose primary purpose is to lower the seasonal high groundwater table and where slopes are less than or equal to 2%
(surface applied) ..... 10 feet
(subsurface applied) ..... 5 feet

Application under this reduced buffer zone requirement shall be reported in the yearly summary report.

i. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

15. A yearly summary report shall be prepared for the previous calendar year and maintained on site and made available to department personnel upon request. The report shall include:

a. A summary of the monitoring data results including waste, soil, and groundwater analyses.

b. A summary on the total animal waste (volume and loadings) land applied, both on and off site, during the year.

c. The yearly waste balance showing inputs to and drawdown from the storage facilities.

d. A summary of the agronomic practices which occurred during the preceding growing season including (but not limited to) the timing and number of crop cuttings, an estimate of total crop yield (tons or bushels/acre) removed from the site, any lime and fertilizer additions made to the site (type and quantities).

e. A listing of the average number of animals on-site during the year.

f. A general statement of past system performance and the status of the permitted facilities with regard to complying with the Virginia Pollution Abatement General Permit requirements.

16. A Facilities Closure Plan shall be developed prior to termination of the pollutant management activities covered under this permit. The plan shall incorporate:

a. The volume, percent solids, nutrient content, and other waste characterization information appropriate to the nature of the waste materials.

b. A listing of all waste products at the facility along with a description of procedures for removal, land application, or other proper disposal of the wastes.

c. Closure plans for all waste treatment, storage, and handling facilities. The Facilities Closure Plan shall be submitted to the department at least 90 days prior to implementation of the plan.

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 (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.

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;

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 retained on site 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 project 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 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 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 to the department results of the monitoring required in Part I A with the registration statement during the reissuance process.

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 with the project summary report at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times 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 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 Part II F 2 a-c 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 paragraph.

If the department's 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 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. 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."

PART III.
MANAGEMENT REQUIREMENTS.

A. Change in management of pollutants.

1. All 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 the management of new or increased pollutants. The management of any pollutant at a level greater than that identified and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

2. 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 management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works 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, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.

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 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 or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has 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 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.

b. The permittee shall provide an adequate operating staff 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 limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved Nutrient Management Plan 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. Compliance with state law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law.

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.

G. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to reregister.

If the permittee wishes to continue to operate under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

J. Right of entry.

The permittee shall allow, or secure necessary authority to allow, authorized state 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, process stream, raw material or by-product; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

L. Public access to information.

All information pertaining to the permit process or in reference to any pollutant management activities shall be available to the public.

M. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When the level of 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.

N. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

O. When an individual permit may be required.

The director may require any permittee authorized to manage pollutants 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 pollutant management activities violate the terms or conditions of this permit;

2. When additions or alterations have been made to the affected facility which require the application of permit conditions that differ from those of the existing permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered by this permit which were not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance.

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.

P. When an individual permit may be requested.

Any permittee 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 a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

Q. 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.

R. 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.

S. 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. R94-151; Filed October 27, 1993, 11:11 a.m.

* * * * * * * *

Title of Regulation: **VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations for Swine, Dairy, and Slaughter and Feeder Cattle.**

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Public Hearing Dates:
January 5, 1994 - 7 p.m.
January 11, 1994 - 7 p.m.
January 13, 1994 - 7 p.m.
Written comments may be submitted until January 28, 1994.
(See Calendar of Events section for additional information)

Basis: The authority for this regulation is pursuant to the State Water Control Law, §§ 62.1-44.15 (7), (10), (14); 62.1-44.17; 62.1-44.20; 62.1-44.21 of the Code of Virginia and § 6.2 of the Permit Regulation (VR 680-14-01).

Purpose: The purpose of the proposed regulation is to authorize pollutant management activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. The VPA permit program authorizes the pollutant management activities at animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater or sludges.

Substance: This proposed regulation will (i) define the operations which may be authorized by this general permit; (ii) establish procedures to submit a Registration Statement as intention to be covered by the general permit; (iii) establish standard criteria for the design and operation of the treatment works; and (iv) set minimum monitoring and reporting requirements.

Issues: The State Water Control Board is charged with protecting the beneficial uses of surface waters within the Commonwealth. In order to accomplish this goal, control of pollutants from concentrated animal feeding operations is necessary. An important issue to be considered is the continued costly and excessive burden imposed on the regulated community and the department if the general permit regulation is not adopted. The only other option would be to continue to require the submittal of individual applications and the issuance of individual permits for each facility at much higher costs. Other issues involve the development of a Nutrient Management Plan to control the land application of waste, compliance with the criteria for the treatment works and storage facilities, and the monitoring and reporting requirements.

Impact: The permit regulation requires permit applications from concentrated animal feeding operations for their pollution management activities. In Virginia there are approximately 25 facilities that may be required to submit a permit application under the VPA program. As required by this regulation, any facility which intends to be covered under a general permit must submit a complete Registration Statement, develop a Nutrient Management Plan, comply with the standard criteria for the design and operation of the treatment works, and perform minimum monitoring and reporting. Facilities with specific types of storage facilities may have additional monitoring requirements.

Affected Locality: The proposed regulation will be applicable statewide and will not affect any one locality disproportionately.

Applicable Federal Requirements: The VPA permit program authorizes the pollutant management activities at animal feeding operations may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater or sludges. This is a state adopted program and there are no applicable federal requirements.

Summary:

The Virginia Pollution Abatement (VPA) permit program authorizes the pollutant management activities at concentrated animal feeding operations which may involve the operation and maintenance of treatment works for waste storage, treatment or recycle and the land application of wastewater and sludges. All pollutant management activities are required to maintain no point source discharge of pollution to state waters except in the case of a 25-year, 24-hour or greater storm event. A concentrated animal feeding operation is one at which greater than 1,000 animal units are confined.

The purpose of this proposed regulation is to authorize the management of pollutants or activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a general permit. The proposed regulation establishes the procedures for submitting a Registration Statement to obtain coverage under the general permit, establishes the standard criteria for the design and operation of the treatment works for waste storage, treatment or recycle and for the land application of wastewater or sludges and sets minimum monitoring and reporting requirements.

The Department of Environmental Quality will administer this program. Upon receipt of a complete Registration Statement, the applicant will be notified of coverage and will receive a copy of the general permit. The general permit will authorize the pollutant management activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle.

VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations for Swine, Dairy, and Slaughter and Feeder Cattle.

§ 1. Definitions.

The words and terms used in this regulation shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (VR 680-14-01) 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.

"Permittee" means the owner whose concentrated animal feeding operation for swine, dairy or slaughter and feeder cattle is covered under this general permit.

"Waste storage facility" means a waste holding pond or tank used to store manure prior to land application, or a lagoon or treatment facility used to digest or reduce the solids or nutrients.

§ 2. Purpose.

This general permit regulation governs the pollutant management activities of animal wastes at concentrated animal feeding operations for swine, dairy, and feeder and slaughter cattle. These concentrated animal feeding operations may operate and maintain treatment works for waste storage, treatment or recycle and may perform land application of wastewater or sludges.

§ 3. 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.

§ 4. Effective date of the permit.

This general permit will become effective on XXX. This general permit will expire five years from the effective date. Any covered owner is authorized to manage pollutants, that are not point source discharges to state waters, under this general permit upon compliance with all the provisions of §§ 5 and 6 and the receipt of this general permit.

§ 5. Authorization to manage pollutants.

Any owner governed by this general permit is hereby authorized to manage pollutants at concentrated animal feeding operations for swine, dairy, and slaughter and feeder cattle provided that the owner files and receives acceptance, by the director, of the registration statement of § 6, complies with the requirements of § 8, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the permit regulation. Currently permitted operations may be authorized under this general permit after an existing permit expires provided that the criteria of the general permit are met.

2. The operation of the facilities of the owner shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater except in the event of a 25-year, 24-hour or greater storm event. Domestic sewage or industrial waste shall not be managed under this general permit.

3. The owner of any proposed pollutant management activities or those which have not previously been issued a valid Virginia Pollution Abatement (VPA) permit or Industrial Waste-No Discharge (IW-ND) Certificate must attach to the Registration Statement notification from the governing body of the county, city or town in which the activities are to take place that the location and operation of the facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq) of Title 15.1 of the Code of Virginia.

4. A Nutrient Management Plan (NMP) for the facility must be approved by the Department of Conservation and Recreation (DCR), Division of Soil and Water Conservation (DSWC) prior to the submittal of the Registration Statement. The owner of the pollutant management activities shall attach to the Registration Statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.

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.

§ 6. Registration statement.

The owner shall file a complete VPA General Permit Registration Statement for the management of pollutants at concentrated animal feeding operations for swine, dairy, and slaughter and feeder cattle in accordance with this regulation.

Any owner proposing a new pollutant management activity shall file a complete Registration Statement at least 30 days prior to the date planned for commencing erection or construction of new processes at any site. There shall be no operation of said facilities prior to coverage under a permit. Any owner with an existing pollutant management activity covered by an individual VPA permit who is proposing to be covered by this general permit shall file a complete Registration Statement at least 180 days prior to the expiration date of the individual VPA permit.

The required Registration Statement shall be in the following form:

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VIRGINIA POLLUTION ABATEMENT
GENERAL PERMIT REGISTRATION STATEMENT
FOR CONCENTRATED ANIMAL FEEDING OPERATIONS
FOR SWINE, DAIRY, AND SLAUGHTER AND FEEDER CATTLE

1. Facility Name:

Address:
City: State: Zip Code:
2. Owner Name:
Address:
City: State: Zip Code:
Phone:

3. Operator Name:

Address:
City: State: Zip Code:
Phone:
Facility Contact:
Phone:
Best Time to Contact (day time):

4. Does this facility have an existing VPA permit or IW-ND Certificate?

Yes/No

If yes, list the existing VPA Permit Number or IW-ND Certificate Number:

5. Indicate the maximum number and average weight

of the type(s) of animal which will be maintained at your facility:

Animal Type	Maximum Number	Average Weight
Dairy Cattle		
Slaughter and Feeder Cattle		
Swine		

6. Indicate the number and type of waste storage facilities at the site.

No.	Type	Existing	Proposed
	Earthen storage basin		
	Clay Lined		
	Synthetic Liner		
	Concrete Tank		
	Steel Tank		

7. List any waste other than manure (e.g., wash down, dairy parlor waste or sewage) which may be discharged to the storage facility:

8. Will any of the waste generated at your facility be land applied?

Yes/No

9. Are all the land application sites owned by the applicant?

Yes/No

If No, complete page 4 of this Registration Statement for each nonapplicant land owner on whose property animal waste from this facility will be applied.

10. The owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA permit or IW-ND Certificate must attach to the Registration Statement notification from the governing body of the county, city or town in which the activities are to take place that the location and operation of the facility are consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.2-427 et seq.) of Title 15.1 of the Code of Virginia.

11. The owner of the pollutant management activities must attach to the Registration Statement a copy of the letter from the Department of Conservation and Recreation certifying approval of the Nutrient Management Plan.

12. 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:*

AUTHORIZATION TO LAND APPLY WASTE

(Land Owner Must Sign and Date This Approval)

As land owner, I authorize ..... to land apply animal waste to my property in accordance with the requirements of the VPA General permit for Concentrated Animal Feeding Operations. This authorization will remain in effect until such time as I notify the Department of Environmental Quality, Water Division in writing that this authorization has been withdrawn.

PRINT NAME:
SITE LOCATION:
PHONE:
DATE:
SIGNATURE:

§ 7. General permit.

Any owner 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.

General permit No.: VAG000xxx
Effective Date:
Expiration Date:

GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR CONCENTRATED ANIMAL FEEDING OPERATIONS FOR SWINE, DAIRY, AND SLAUGHTER AND FEEDER CATTLE

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of concentrated animal

feeding operations for swine, dairy, and slaughter and feeder cattle are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the Registration Statement, supporting data submitted to the Department of Environmental Quality, Water Division, this cover page, Part I - Management and Monitoring Requirements, Part II - Monitoring and Reporting, and Part III - Management Requirements, as set forth herein.

PART I.
MANAGEMENT AND MONITORING REQUIREMENTS.

A. Management 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 manage pollutants at the permitted site.

2. Groundwater monitoring wells shall be installed at new earthen waste storage facilities located east of Interstate 95 including the eastern shore prior to any waste being placed in the storage facility. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility. One data set shall be collected from each well prior to any waste being placed in the storage facility. Existing wells may be utilized to meet this requirement if properly located and constructed.

3. All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located in the state.

4. In accordance with A 2 and A 3 above, the ground water shall be monitored by the permittee at the monitoring wells as specified below:

GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	ft	1/6 months	Measured
Ammonia Nitrogen	NL	mg/l	1/6 months	Grab
Nitrate Nitrogen	NL	mg/l	1/6 months	Grab
pH	NL	SU	1/6 months	Grab
Conductivity	NL	umhos/cm	1/6 months	Grab

NL = No limit, this is a monitoring requirement only.

5. The static water level shall be measured prior to bailing well water for sampling. At least 3 well volumes of groundwater shall be withdrawn immediately prior to sampling each monitoring well.

6. Soil monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.

7. The soils at the facility shall be monitored by the permittee as specified below:

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/year	Composite
Phosphorus	NL	ppm	1/year	Composite
Potash	NL	ppm	1/year	Composite
Calcium	NL	ppm	1/year	Composite
Magnesium	NL	ppm	1/year	Composite
Nitrate	NL	ppm	1/year	Composite

NL = No limit, this is a monitoring requirement only.

8. Soil monitoring should be conducted at a depth of between 0-6". The Nitrate test is required only on those sites planted in corn or small grains at a soil depth of 0-12".

9. Waste monitoring shall be performed as specified below along with any additional parameters specified in the approved Nutrient Management Plan.

10. The waste at the facility shall be monitored by the permittee as specified below:

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	ppm	1/year	Composite
Ammonia Nitrogen	NL	ppm	1/year	Composite
Total Phosphorus	NL	ppm	1/year	Composite
Total Potassium	NL	ppm	1/year	Composite
Calcium	NL	ppm	1/year	Composite
Magnesium	NL	ppm	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

11. All monitoring data collected as required by Part I A shall be maintained on site in accordance with Part II C and submitted upon request and during the

reissuance process with the Registration Statement.

B. Other Requirements or Special Conditions.

1. There shall be no discharge of pollutants to surface waters from this operation except in the case of a 25-year, 24-hour or greater storm event. The operation of the facilities of the owner permitted herein shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law.

2. Any and all 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, byproduct or wastes, shall be handled, disposed of, or stored in such a manner so as not to permit a discharge of such product, materials, industrial wastes, or other wastes to State waters, except as expressly authorized.

3. The waste storage facilities shall be designed and operated to prevent point source discharges of pollutants to state waters except in the case of a 25-year, 24-hour or greater storm event. Adequate waste storage capacity must be present to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste. The minimum storage capacity requirements shall be based upon the approved nutrient management plan.

4. New waste storage facilities shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

5. New earthen waste storage facilities shall be constructed with a 2-foot separation distance between the bottom of the storage facility and the seasonal high water table.

6. For new earthen waste storage facilities, the soils used as lagoon liners shall be capable of achieving a maximum coefficient of permeability of 1 x 10-6 cm/sec or less throughout the impoundment sides and bottom after compaction at or up to 4.0% above the optimum moisture content to at least 95% Standard Proctor Density. Total soil liner thickness shall be one foot after compaction of two separate lifts of equal thickness. The final permeability rate shall be verified by a professional engineer or a soils laboratory. Should a synthetic liner be chosen, the liner thickness shall not be less than 20 mils and shall be compatible with the waste, and be appropriately protected from puncture both below and above the liner. Written certification ensuring lagoon liner integrity and proper installation shall be made, prior to the waste storage facility being placed in operation, by a liner manufacturer or a professional engineer and shall be maintained on site.

7. All waste storage facilities shall maintain a minimum freeboard of two feet at all times. Should the two-foot freeboard not be maintained, the permittee shall immediately notify the department, describing the problem and the corrective measures taken. Within five days of the notification, the permittee shall submit a written statement of explanation and corrective measures.

8. The owner of a new animal feeding operation shall develop an Operations and Maintenance (O & M) Manual for the treatment works/pollutant management system permitted herein prior to operation of the system. The owner of an existing animal feeding operation shall develop the O & M Manual within 90 days of the date of coverage under this permit. The O & M Manual shall, at a minimum, contain the following information:

a. Introduction;

b. Waste treatment processes including storage, transmission and distribution system of the land application system;

c. Specific operation and maintenance information of each process discussed in item b above;

d. Schedules of operation and maintenance;

e. Sampling and testing protocols; and

f. Recordkeeping.

The permittee shall operate the treatment works/pollutant management system in accordance with the O & M Manual which becomes an enforceable part of the permit. Any changes in the practices and procedures shall be documented and made a part of the O & M Manual. The revised manual shall become an enforceable part of the permit. The O & M Manual shall be maintained on site and made available to Department personnel upon request.

9. The "Nutrient Management Plan" (NMP) approved by the Department of Conservation and Recreation (DCR) shall be implemented, maintained on site and made available to Department personnel upon request. The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;

b. Site evaluation - assessment of soil types and

potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements;

e. Calculation of waste application rates; and

f. Waste application schedules.

10. Animal waste/wastewater shall not be applied to soils which are saturated by previous precipitation events, or to ice or snow covered or frozen ground.

11. Wastewater shall not be applied by a spray irrigation system at rates that exceed 0.25 in/hr, 1 in/day and 2 in/week, unless alternate rates have been specified by the approved Nutrient Management Plan.

12. At no time shall animal waste/wastewater be surface applied by a spreader at a hydraulic loading rate greater than 14,000 gal/AC (0.5 inches depth) in a single application procedure unless alternate rates have been specified by the approved Nutrient Management Plan.

13. The application of animal waste together with any other source of Plant Available Nitrogen (PAN) shall not exceed the agronomic loading rate for the crops grown on each site in accordance with the approved Nutrient Management Plan. PAN calculations shall be made using the results from the most recent waste monitoring period or the facilities' long-term average waste monitoring results.

14. Buffer zones shall be maintained as follows:

a. Distance from improved roadways ..... 25 feet

b. Distance from occupied dwellings ..... 200 feet

c. Distance from water supply wells
or springs ..... 100 feet

d. Distance from surface water courses
(by surface application) ..... 50 feet
(by subsurface injection) ..... 25 feet

e. Distance from property lines
(by surface application) ..... 25 feet
(subsurface injection) ..... 25 feet

f. Distance from rock outcropping
(except limestone) ..... 25. feet

g. Distance from limestone outcroppings ... 50 feet

h. Distance from artificial agricultural drainage ditches whose primary purpose is to lower the seasonal high groundwater table and where slopes are less than or equal to 2%
(surface applied) ..... 10 feet
(subsurface applied) ..... 5 feet

Application under this reduced buffer zone requirements shall be reported in the yearly summary report.

i. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

15. Access by the general public to the application sites is to be controlled for two months from the time of the last application of animal waste or until the waste has been incorporated below the ground surface.

16. An access control/withholding period of 30 days from the time of the last application of animal waste not incorporated below the ground surface shall be maintained to prevent grazing or feeding of vegetation receiving surface applications of animal waste.

17. A yearly summary report shall be prepared for the previous calendar year and maintained on site and made available to department personnel upon request. The report shall include:

a. A summary of the monitoring data results including waste, soil, and groundwater analyses.

b. A summary on the total animal waste (volume and loadings) land applied, both on and off site, during the year.

c. The yearly waste balance showing inputs to and drawdown from the storage facilities.

d. A summary of the agronomic practices which occurred during the preceding growing season including (but not limited to) the timing and number of crop cuttings, an estimate of total crop yield (tons or bushels/acre) removed from the site, any lime and fertilizer additions made to the site (type and quantities).

e. A listing of the average number of animals on-site during the year.

f. A general statement of past system performance and the status of the permitted facilities with regard to complying with the Virginia Pollution Abatement General permit requirements.

18. A Facilities Closure Plan shall be developed prior to termination of the pollutant management activities covered under this permit. The plan shall incorporate:

a. The volume, percent solids, nutrient content, and

other waste characterization information appropriate to the nature of the waste materials.

b. A listing of all waste products at the facility along with a description of procedures for removal, land application, or other proper disposal of the wastes.

c. Closure plans for all waste treatment, storage, and handling facilities.

The Facilities Closure Plan shall be submitted to the department at least 90 days prior to implementation of the plan.

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 (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.

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;

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 retained on site 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 project 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 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 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 to the department the results of the monitoring required in Part I A with the registration statement during the reissuance process.

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 with the project summary report at least the following information:

a. A description and cause of noncompliance;

b. The period of noncompliance, including exact dates and times 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 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 Part II F 2 a-c 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 paragraph.

If the department's 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 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. 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."

PART III.
MANAGEMENT REQUIREMENTS.

A. Change in management of pollutants.

1. All 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 the management of new or increased pollutants. The management of any pollutant at a level greater than that identi fied and authorized by this permit, shall constitute a violation of the terms and conditions of this permit.

2. 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 management of pollutant(s) which may interfere with, pass through, or otherwise be incompatible with such works or activities, from an establishment or treatment works, if such establishment, treatment works 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, or pollutant management activity that was introducing pollutants into such treatment works at the time of issuance of the permit.

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 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 or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department. The permittee has 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 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.

b. The permittee shall provide an adequate operating staff 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 limitation requirements are not violated.

d. Collected solids shall be stored and utilized as specified in the approved Nutrient Management Plan 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. Compliance with state law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law.

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.

G. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

H. Severability.

The provisions of this permit are severable.

I. Duty to reregister.

If the permittee wishes to continue to operate under a General permit after the expiration date of this permit, the permittee must submit a new registration statement at least 30 days prior to the expiration date of this permit.

J. Right of entry.

The permittee shall allow, or secure necessary authority to allow, authorized state 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, process stream, raw material or byproduct; and

5. To inspect at reasonable times any collection, treatment, or pollutant management activities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging or involved in managing pollutants. Nothing contained herein shall make an inspection time unreasonable during an emergency.

K. Transferability of permits.

This permit may be transferred to a new owner by a permittee if:

1. The current permittee notifies the department 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 permittee 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 permittee and the proposed permittee 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.

L. Public access to information.

All information pertaining to the permit process or in reference to any pollutant management activities shall be available to the public.

M. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;

2. When the level of 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.

N. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

O. When an individual permit may be required.

The director may require any permittee authorized to manage pollutants 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 pollutant management activities violate the terms or conditions of this permit;

2. When additions or alterations have been made to the affected facility which require the application of permit conditions that differ from those of the existing permit or are absent from it; and

3. When new information becomes available about the operation or pollutant management activities covered by this permit which were not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance.

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.

P. When an individual permit may be requested.

Any permittee 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 a permittee the applicability of this general permit to the individual permittee is automatically terminated on the effective date of the individual permit.

Q. 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.

R. 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 § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Law.

S. 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. R94-152; Filed October 27, 1993, 11:13 a.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 CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.**

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

Effective Date: January 1, 1994.

Summary:

The regulations amend the dispatcher classroom and on-the-job training required for dispatchers of law-enforcement personnel to allow greater flexibility for the certified training academies and their membership to meet the training demands for their dispatchers. Additionally, the regulations provide that each dispatcher attending dispatcher classroom training successfully complete each performance based training and testing objective designated for such training, and expand the dispatcher training extension provisions available to the agency administrators.

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 Paula Scott Dehetre, Executive Assistant to the Director, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 786-4000. There may be a charge for copies.

VR 240-01-5. Rules Relating to Compulsory Minimum Training Standards for Dispatchers.

§ 1. Definitions.

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

"Academy director" means the chief administrative officer of a certified training academy.

"Agency administrator" means any chief of police, sheriff, or agency head of a state or local law-enforcement agency.

~~*"Approved training school"* means a training school which provides instruction of at least the minimum training standards mandated by the department and has been approved by the department for the specific purpose of training dispatchers.~~

"Board" means the Criminal Justice Services Board.

"Certified training academy" means a training school which provides instruction of at least the minimum training standards mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department.

"Dispatcher" means any person employed by or in any local or state government agency either full or part-time whose duties include the dispatching of law-enforcement personnel.

[*"Emergency medical dispatcher training" means training which meets or exceeds the training objectives in the document entitled "Performance Based Training and Testing Objectives for Compulsory Minimum Training Standards for Dispatchers."*]

[*"VCIN/NCIC training" means approved training as specified by the Virginia Department of State Police for dispatchers accessing Virginia Crime Information Network/National Crime Information Center information.*]

~~*"School director"* means the chief administrative officer of an approved training school.~~

§ 2. Compulsory minimum training standards.

A. Pursuant to the provisions of § 9-170(8) of the Code of Virginia, the board establishes the following as the compulsory minimum training standards for dispatchers:

	Hours
1. Classroom training	*40*
~~1.~~ *a.* Introduction and role of dispatcher	~~2~~
~~2.~~ *b.* Interpersonal and psychological job factors	~~8~~

~~a. Minimum of 2 hours on crisis problems, situations, and intervention~~

~~b. Minimum of 1 hour practical exercises~~

~~3.~~ *c.* Operating procedures ..... ~~16~~

~~4. Elective studies~~ ..... ~~8~~

~~5.~~ *d.* Rules and regulations governing communications ..... ~~2~~

~~6.~~ *e.* Emergency communications plans/disasters ..... ~~3~~

f. Liability

g. Elective studies

(1) Cultural diversity;

(2) Communicating with difficult people;

(3) Effective listening skills; or

(4) Optional job related subjects (selected at discretion of the certified training academy and subject to the provisions of § 7 A)

~~7.~~ *h.* Testing and evaluation ..... ~~1~~

~~Total classroom hours~~ ..... ~~40~~

~~8. On-the-job training (O.J.T.)~~

2. On-the-job training *40*

a. On-the-job training will include a minimum of 40 hours of local training with selected experienced personnel. Local departments or agencies will follow the format as set forth below in subdivision b. On-the-job training must be completed and the appropriate form forwarded to the department as stated in subsection A of § 4.

b. On-the-job training local.

(1) Agency/department policies, procedures, regulations

(2) Agency/department geographical area

(3) Agency/department telephonic system and equipment operations

(4) Agency/department radio system and equipment operations

(5) Structure of local government

(6) Local ordinances

(7) Legal documents and requirements

(8) ~~Other agencies/resources (local/state/federal)~~ *Governmental and private agency resources*

(9) Other training if applicable:

(a) Emergency medical dispatcher

(b) VCIN/NCIC

Total hours *80*

§ 3. Applicability.

A. All dispatchers employed by or in any local or state government agency whose duties include the dispatching of law-enforcement personnel [and who was] hired on or after July 1, 1988, must meet compulsory minimum training standards herein established, unless provided otherwise in accordance with subsection B of § 3.

B. The director may grant an exemption or partial exemption of the compulsory minimum training standards established herein, in accordance with § 9-173 of the Code of Virginia.

§ 4. Time requirement for completion of training.

A. Every dispatcher who is required to comply with the compulsory minimum training standards must satisfactorily complete the required training set forth in § 2 of these regulations, within 12 months of the date of appointment as a dispatcher, unless provided otherwise in accordance with subsection B of § 4.

B. The director may grant an extension of the time limit for completion of the *compulsory* minimum training ~~required upon presentation of evidence by the agency administrator that such dispatcher was unable to complete the required training within the specified time limit due to illness, injury, military service, special duty assignment required and performed in the public interest, or other prudent reasons. The agency administrator must request such extension prior to expiration of any time limit.~~ *standards under the following conditions:*

1. The chief of police, sheriff or agency administrator shall present written notification that the dispatcher was unable to complete the required training within the specified time limit due to:

a. Illness;

b. Injury;

c. Military service;

d. Special duty assignment required and performed

in the public interest;

e. Administrative leave involving the determination of worker's compensation or disability retirement issues, or suspension pending investigation or adjudication of a crime; or

f. Any other reason documented by the agency administrator. Such reason must be specific and any approval granted shall not exceed 90 days.

2. Any extension granted under subdivision 1 e of this subsection shall require the dispatcher to complete compulsory minimum training prior to resuming job duties. Requests may be granted for periods not to exceed 12 months.

3. The agency administrator must request such extension prior to expiration of any time limit.

§ 5. How compulsory minimum training standards may be attained.

A. The compulsory minimum training standards shall be attained by attending and satisfactorily completing ~~an approved~~ *the required dispatcher training at a certified* training ~~school~~ *academy and completion of on-the-job training as applicable .*

B. Dispatchers attending ~~an approved~~ *compulsory minimum training at a certified* training ~~school~~ *academy* are required to attend all classes and should not be placed on duty or call except in cases of emergency.

§ 6. Approved training schools.

A. ~~Dispatcher training schools must be approved by the department prior to the first scheduled class. Approval is requested by making application to the director on forms provided by the department. The director may approve those schools which, on the basis of curricula, instructors, facilities, and examinations, provide the required minimum training. One application for all mandated training shall be submitted prior to the beginning of each fiscal year. A curriculum listing the subject matter, instructors, dates, and times for the entire proposed training session shall be submitted to the department 30 days prior to the beginning of each such proposed session. The 30-day requirement may be waived for good cause shown by the school director.~~ *Dispatcher classroom training may only be provided by a certified training academy. The certified training academy shall submit to the department the curriculum and other information as designated, within time limitations established by the department.*

B. Each ~~school~~ *academy* director will be required to maintain a file of all current lesson plans and supporting materials for each subject contained in the compulsory minimum training standards.

C. ~~Schools which are approved will be~~ *A certified training academy is* subject to inspection and review by the director or staff.

D. The department may suspend the ~~approval~~ *certification* of ~~an approved~~ *a certified* training ~~school~~ *academy* upon written notice, which shall contain the reason(s) upon which the suspension is based, to the school's director. The ~~school's~~ *academy's* director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of notice of suspension. The ~~school's~~ *academy's* director may appeal the director or designee's decision to the board.

E. The department may revoke the ~~approval~~ *certification* of any ~~approved~~ *certified* training ~~school~~ *academy* upon written notice which shall contain the reason(s) upon which the revocation is based to the school's director. The ~~school's~~ *academy's* director may request a hearing before the director or his designee. The request shall be in writing and must be received by the department within 15 days of the date of the notice of revocation. The ~~school's~~ *academy's* director may appeal the director or designee's decision to the board.

§ 7. Grading.

A. ~~All written examinations shall include a minimum of two questions for each hour of mandatory instruction. This requirement likewise includes the classroom instruction on performance oriented subject matter. However, for those subjects which exceed five hours of instruction, 10 questions will suffice as an acceptable minimum.~~ *Each certified training academy shall test each student in accordance with the objectives in the document entitled "Performance Based Training and Testing Objectives for Compulsory Minimum Training Standards for Dispatchers." Any certified training academy providing training in accordance with subdivision 1 g (4) of § 2 of these regulations shall be required to develop performance based training and testing objectives and test for any optional job related subjects selected.*

B. ~~All dispatchers must obtain a minimum grade of 70% in each grading category to satisfactorily complete the compulsory minimum training standards. Any dispatcher who fails to obtain the minimum 70% in any grading category will be required to take all subjects comprising that grading category in a subsequent approved training school. A dispatcher may be tested and retested as may be necessary within the time limits of § 4 of these regulations and each academy's written policy. A dispatcher shall not be certified as having complied with compulsory minimum training standards unless all applicable requirements have been met.~~ *Every individual attending compulsory minimum training shall satisfactorily complete each required performance objective and any optional job related subject performance objective, where applicable. Any individual who fails to satisfactorily complete any performance objective or objectives in any subject will be required to attend that subject in a*

subsequent approved dispatcher training school and satisfactorily complete the required performance objective or objectives.

~~C. Approved dispatcher training schools shall maintain accurate records of all tests, grades and testing procedures. Academy training records must be maintained in accordance with the provisions of these regulations and §§ 42.1-76 through 42.1-91 of the Code of Virginia.~~

~~D. The school director shall complete a grade report on each dispatcher on forms approved by the department.~~

§ 8. Failure to comply with rules and regulations.

~~Dispatchers~~ *Individuals* attending ~~an approved~~ *a certified* training ~~school~~ *academy* shall comply with the rules and regulations promulgated by the department and any other rules and regulations within the authority of the ~~school~~ *academy* director. The ~~school~~ *academy* director shall be responsible for enforcement of all rules and regulations established to govern the conduct of attendees. If the ~~school~~ *academy* director considers a violation of the rules and regulations detrimental to the welfare of the ~~school~~ *academy* , the ~~school~~ *academy* director may expel the ~~dispatcher~~ *individual* from the ~~school~~ *certified training academy* . Notification of such action shall immediately be reported , in writing, to the agency administrator of the dispatcher and the director.

§ 9. Administrative requirements.

A. Reports will be required from the agency administrator and ~~school~~ *academy* director on forms approved or provided by the department and at such times as designated by the director.

B. The agency administrator shall , within the time requirement set forth in subsection A of § 4 , forward a properly executed on-the-job training form to the department for each dispatcher.

C. The ~~school~~ *academy* director shall, within 30 days upon completion of ~~an approved~~ *the dispatcher* training ~~school, comply with the following:~~ *, submit to the department a roster containing the names of those individuals who have satisfactorily completed all classroom training requirements.*

~~1. Prepare a grade report on each dispatcher maintaining the original for academy records and forwarding a copy to the agency administrator of the dispatcher; and~~

~~2. Submit to the department a roster containing the names of those dispatchers who have satisfactorily completed all training requirements and, if applicable, a revised curriculum for the training session.~~

D. The ~~school~~ *academy* director shall furnish each instructor with ~~a complete set of course resumes and~~ *the performance based training and testing* objectives for the assigned subject matter.

E. Each certified training academy shall maintain accurate records of all tests, grades and testing procedures. Dispatcher training records shall be maintained in accordance with the provisions of these regulations and §§ 42.1-67 through 42.1-91 of the Code of Virginia.

VA.R. Doc. No. R94-172; Filed October 27, 1993, 11:41 a.m.

DCJS (1/94)

DEPARTMENT OF CRIMINAL JUSTICE SERVICES
ON THE JOB TRAINING: DISPATCHERS

FOR DCJS USE ONLY
Certificate mailed to Academy as identified hereon
Date: _____
Initials: _____

Dispatcher's Name: _____ OLN#: _____
(Last) (First) (Middle)
Agency/ Department: _____
Academy: _____ Dates: _____ thru: _____
(Academy must complete dates of training, name and be initials and address of academy)

Instructions:

The chief administrative officer of a local agency or department is responsible for assuring this form is completed and returned to: Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219. The on the job training instructor assigned to training a dispatcher must certify when each of the listed requirements are satisfactorily completed by dating and initialing the subjects as training is completed.

SUBJECTS	DATE COMPLETED	ON THE JOB TRAINING INSTRUCTORS INITIALS
Agency/ Department Policies, Procedures, and Regulations		
Agency/ Department Geographical Area		
Virginia Criminal Information Network		
Agency/ Department Telephonic System and Equipment Operations		
Agency/ Department Radio System and Equipment Operations		
Structure of Local Government		
Local Ordinances		
Legal Documents and Requirements		
Other Agencies/ Resources (local, state, federal)		

I certify that the above-named dispatcher has received a minimum of 60 hours on the job training in applicable subjects listed above

_____ _____
(DATE) (SIGNATURE OF SHERIFF, CHIEF OR AGENCY ADMINISTRATOR)

Department of Criminal Justice Services
DCJS
Commonwealth of Virginia
Form 41 (Rev. 1/93)

Criminal Justice Training Roster

Please type. See instructions on reverse side.

Name of Certified Academy: _____

FOR DCJS USE ONLY:
Agency ID: _____
Training Code: _____

Only those officers who have completed the training checked at the left of this form should be listed below!

To report BASIC TRAINING (Entry Level) check one of the following:
____ Law Enforcement Officer
____ Jailor/Custodial Officer
____ Dispatcher
____ DOC Correctional Officer
____ Court Security Officer
____ Civil Process Officer

(In case of a "combined school," there should be a separate roster for each group of officers who have satisfactorily completed the training for each of the functions combined in the school.)

Date Basic Training Started: _____
Number of Officers Beginning Training: _____
Number of Officers Satisfactorily Completing Training: _____

To report IN-SERVICE TRAINING check one of the following:
____ Law Enforcement Officer
____ Jailor/Custodial Officer
____ DOC Officer
____ Court Security/ Civil Process Officer

To report INSTRUCTOR DEVELOPMENT TRAINING check appropriate categories:
____ Initial ____ Recertification
____ General
____ Firearms
____ Defensive Tactics
____ Driver Training
____ Radar

OTHER TRAINING (specify): _____

Date Officer Completed Training (MM-DD-YY)	DMV Operator's License No.	Name of Officer (Last, First, Middle Initial)	Department

Department of Criminal Justice Services
DCJS
Commonwealth of Virginia
Form 41 (Rev. 1/93)

Criminal Justice Training Roster
Part Two
(Continuation of Listing From Other Side of This Sheet)

FOR DCJS USE ONLY:
Agency ID: _____
Training Code: _____

Date Officer Completed Training (MM-DD-YY)	DMV Operator's License No.	Name of Officer (Last, First, Middle Initial)	Department

I certify that the individuals listed have satisfactorily complied with the applicable rules relating to compulsory training standards and have completed all requirements established by the Criminal Justice Services Board and the Department of Criminal Justice Services.

Name of Certified Academy Director: _____ Signature: _____ Date: _____

GENERAL INSTRUCTIONS

Dates should be expressed numerically as six digits (month-day-year). For example, September 9, 1993, should be reported as 09 09 93; October 11, 1993, as 10 11 93; etc. If the same date is repeated consecutively in the column for Completion Date of Training, "ditto marks" may be used to indicate the repetition of a date.

If the officer does not have a driver's license issued by the Virginia Division of Motor Vehicles, his/her Social Security Number should be entered in the column headed "VA. DMV OPERATOR'S LICENSE NO." This number is essential for accurate processing of training data by the Department of Criminal Justice Services.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

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

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

Effective Date: December 15, 1993.

Summary:

This regulation is being repealed concurrent with the promulgation of the new regulation, Minimum Standards for Licensed Family Day Homes. Amendments to the Code of Virginia require the promulgation of regulations for the licensure of family day homes to be effective November 1, 1993. Maintaining the current regulations would conflict with the 1993 statutory mandate and would also leave many children without the health and safety protections the revised standards offer them.

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: Margaret Friedenberg, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

VA.R. Doc. No. R94-52; Filed September 28, 1993, 3:49 p.m.

* * * * * * * *

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

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

Effective Date: December 15, 1993.

Summary:

The final regulation is developed to show major additions and revisions in the licensing standards caused by changes to the Code of Virginia relating to family day homes and deemed necessary to update licensing requirements which have not been significantly revised since 1979. The 1993 General Assembly amended the Code of Virginia to change the name and definition of a family day care home to that of a family day home and to require the licensure of a family day home.

The licensing statute mandates that from July 1, 1993, until July 1, 1996, the licensure threshold shall be increased to nine children received for care and establishes a licensure capacity of no more than 12 children, exclusive of the provider's own children and children residing in the home. Effective July 1, 1996, the licensure threshold reverts to six children received for care and a licensure capacity is maintained of no more than 12 children, exclusive of the provider's own children and children residing in the home.

The regulation has multiple topic areas which positively impact the overall care, protection, and health of children in a licensed family day home. The areas addressed are listed below:

1. *Definitions*
2. *Legal base*
3. *Qualifications for family day providers and assistants*
4. *Ratios of adults to children*
5. *Household*
6. *Physical environment*
7. *Fire and shock prevention and emergency procedures*
8. *Small appliances and kitchen equipment*
9. *Space and equipment for children*
10. *Program and services*
11. *Supervision*
12. *Diapering, toileting, and waste disposal*
13. *Transportation*
14. *Behavior and guidance*
15. *Nutrition and food services*
16. *Health requirements for family day household members and care givers*
17. *Health requirements for children*
18. *Illness, injury and death*
19. *Medication and first aid supplies*
20. *Animals*
21. *Record keeping responsibilities*

Substantial changes to the proposed licensed family day home regulation are described as follows and are incorporated into the final regulation:

1. Definitions are added to clarify additions or revisions to the standards.

2. The qualifications for care givers are revised for clarity, and the additional qualifications are added.

3. Documentation of provider training shall be maintained by the provider in the family day home for the period of licensure instead of for two years.

4. All children in the care and supervision of the provider, other than the provider's own children and children who reside in the home, are to be counted in the licensed capacity when at least one child is received for compensation.

5. The adult-to-child ratios and staffing requirements are revised in response to public comment and for clarification.

6. The parent and provider shall mutually determine a recommendation for the level of staffing necessary to care for a child with special needs. If the cost of care is subsidized, a community services board caseworker or a local department of social services caseworker must review the recommendation. The regional licensing representative shall make a final determination of the level of staffing necessary to care for all children in care when a child with special needs is receiving care.

7. The term "moral turpitude" is deleted from the regulation as a crime that prohibits an individual from being an employee or volunteer in a family day home. Clarification is given to child welfare agencies that all adult care givers and family day household members must not have been convicted of any of the barrier crimes cited in § 63.1-198.1 of the Code of Virginia.

8. A standard is added that prohibits a home from being licensed if a care giver or family day household member 14 years of age and older is listed in the Child Protective Services Central Registry. All care givers and household members of a currently licensed family day home who are 14 years of age and older must have a Child Protective Services Central Registry clearance conducted no later than January 31, 1994.

9. Protective barriers including but not limited to safety gates must also be installed on stairways for children over two years of age who are not developmentally ready to climb or descend stairs without supervision.

10. The family day home is required to have indoor running water and a bathroom.

11. Family day homes that are connected to a municipal water supply and sewer line with open and obvious symptoms of water or sewage system problems are required to have these problems corrected.

12. Electrical appliances and equipment with cords that are frayed and have exposed wires are prohibited from being used.

13. Alternate heating devices and ventilating devices may be inspected annually by a qualified inspector instead of a heating and air conditioning contractor.

14. Smoke detectors must be either battery operated or have a battery backup and the licensee must document the dates when batteries are tested and replaced.

15. Instead of requiring that all electrical appliances be placed in a cabinet or drawer with child resistant latches, such items are now required to be unplugged and placed in an area inaccessible to children, unless being used by the care giver or with children under close supervision.

16. Rest mats that are used by children must have at least an inch of cushioning and be sanitized at least weekly and as needed.

17. Cribs are required to be provided for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed instead of requiring that cribs be provided for children under 18 months of age. Play pens are prohibited from being used; porta cribs (nonfull size cribs) are allowed.

18. Children using infant carrier seats or high chairs are required to be supervised closely at all times, not only during meals.

19. Providers are required to promptly move an infant who falls asleep in a play space other than his own sleeping space to his designated sleeping space if the safety or comfort of the infant is in question.

20. During swimming and wading activities, a minimum of two care givers must be present and able to supervise children when three or more children are in the water, with the exclusion of wading pools.

21. During each diaper change, a moist, clean individually assigned cloth may be used if a child is allergic to disposable wipes.

22. Garbage and rubbish must be removed from the premises at least once weekly instead of twice weekly.

23. The term time out replaces the word separation as a discipline technique. When time out is used, it shall be used sparingly and a child must not be left alone inside or outside of the home while separated from the group.

24. The standard is deleted that requires providers to provide special dietary foods for individual children. Providers may choose to do so when requested by parents.

25. Another exception is added to health requirements for children. A child may delay obtaining immunizations if a physician confirms that they are not advisable for specific health reasons. The physician's statement must include an estimated date for when immunizations can be safely administered and the child must be immunized no later than 30 days after this date.

26. In addition to an oral body temperature of 101°F or greater, a child shall also be excluded from a family day home if the child has an axillary (armpit) temperature of 100°F or greater.

27. Section 6.10 is clarified to require an injury or

accident to be recorded in a child's record when the injury or accident was sustained by the child while at the family day home and required first aid or medical attention. Providers are also required to file verification that parents have been notified of an injury or accident.

28. The requirement that the provider must have a recommendation from a health care provider before giving a child prescription and nonprescription drugs is deleted. Medications shall only be given to a child as directed by the prescription label or by the instructions on the original container and with parental consent. Any over-the-counter medication must be kept in the original container.

29. A statement acknowledging parental consent to administer medication to a child must be included in the child's record.

30. Excluded from the items required to be covered in the provider and parent written agreement are: the type of television programs which parents consider acceptable for children to view, and a statement acknowledging that the parent has been informed of whether the provider does or does not carry liability insurance.

31. The provider shall not be required to maintain records of inspection visits, corrective action plans, and any legal actions.

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 Margaret Friedenberg, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

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

PART I.
GENERAL.

Article 1.
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:

"Accessible" means capable of being entered, reached, or used.

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

"Age appropriate" means suitable to the chronological [~~age~~ ages] and developmental [~~characteristic~~ characteristics] of children.

"Care giver" means the provider, substitute provider or assistant.

"Child" [~~means any individual under 18 years of age. Effective July 1, 1993, "child"~~] means an individual under 13 years of age for purposes of child day programs.

["Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child Protective Services Central Registry" means the name index of individuals involved in child abuse and neglect reports maintained by the Virginia Department of Social Services.

"Child with special needs" means a child with diagnosed physical, mental, or emotional disabilities such as but not limited to cerebral palsy, sensory impairment, learning disabilities, behavior disorders, chronic illnesses, deficit in social functioning, mental retardation or emotional disturbance and who may require special monitoring or specialized programs, interventions or facilities.]

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

["Cooling device" means a mechanism used to cool a room such as an electric fan or air conditioner.]

"Department" means the Virginia Department of Social Services.

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

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13 exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, family day homes serving six through 12 children, exclusive of the provider's own

children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day home assistant" or "assistant" means an individual who is 14 years of age or older and [*who*] *helps the family day home provider in the care, protection, supervision and guidance of children in* [*the*] *home.*

"Family day home provider" or "provider" means [~~*a person*~~ *an individual*] *who is 18 years of age or older and who is issued the family day home license by the Department of Social Services and has primary responsibility in providing care, protection, supervision and guidance for children in the family home.*

"Family day home standards" means the Minimum Standards for Licensed Family Day Homes or [*the requirements for*] *family day homes subject to licensure.*

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual (i) maintains business/professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and dependability, and (ii) has a history or pattern of behavior that demonstrates [*that*] *the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances,* [~~*may*~~ *shall*] *not be considered objective references.*

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth [~~*to 16*~~ *through 15*] *months.*

"Licensee" means the person or persons to whom the license is issued.

[*"Major accident" or "major injury" means an accident or injury that requires emergency care or treatment.*

"Minor accident" or "minor injury" means an accident or injury that does not require emergency care or treatment but may require first aid or medical attention.]

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

"Physician" means an individual licensed to practice medicine.

"Substitute provider" means [~~*a person*~~ *an individual*] *18 years of age or older who meets the qualifications for family day providers, is designated by the family day home provider and approved by the department and who is readily available to provide substitute child care in the family day provider's home.*

[*"Time out" means a discipline technique in which a child is moved for a brief time away from the stimulation and reinforcement of ongoing activities and other children in the group to allow the child to regain composure when losing self-control.*

"Ventilating device" means a mechanism used to provide fresh air and to circulate air in a room.]

Article 2.
Legal Base.

§ 1.2. Section 63.1-196 of the Code of Virginia requires the licensure of certain family day homes. A family day home which is subject to licensure shall be licensed before it begins to provide day care and the license shall be posted in a conspicuous place at the licensed premises as cited in § 63.1-196 C of the Code of Virginia. A family day home is required to be licensed when nine through 12 children, exclusive of the provider's own children and any children who reside in the home, are provided care at any one time. Effective July 1, 1996, a family day home is subject to licensure when six through 12 children, exclusive of the provider's own children and any children who reside in the home, are provided care at any one time.

§ 1.3. [~~*When*~~ *If*] *13 or more children, exclusive of the provider's own children and children who reside in the home, are receiving care at any one time in a family day home that is subject to licensure, Child Day Center Standards shall apply.*

[~~*§ 1.4. Family day home standards are designed solely as minimum requirements to be met and maintained by family day homes required to be licensed as cited in § 63.1-195 of the Code of Virginia.*~~]

PART II.
PERSONNEL.

Article 1.
Qualifications for Family Day Providers and Assistants.

§ 2.1. Care givers shall be able to [~~*read,*~~] *understand and carry out responsibilities and requirements of the Minimum Standards for Licensed Family Day Homes.*

§ 2.2. Care givers shall have the following attributes:

1. An understanding of the varying capabilities, interests, needs [,] *and problems of children in care* [~~*and*~~ ;] *the ability to relate to children with courtesy,*

respect, patience, and affection [~~,~~ ;] and an understanding and respect for the families of children in care;

2. The ability to speak [, read,] and write in English as necessary to meet the requirements of this regulation;

3. The ability to provide activities and experiences daily [~~,~~ that reflect the cultural and ethnic diversity of enrolled children, and] that will enhance the total development of children; and

4. The ability to understand instructions on prescription and nonprescription medicines, handle emergencies with dependability and sound judgment, and communicate effectively with emergency personnel.

§ 2.3. Care givers shall be responsible [~~, wholesome~~] , of good character and reputation, and [shall] display behavior that demonstrates emotional stability and maturity.

§ 2.4. No person [listed in the Child Protective Services Central Registry or] convicted of a crime involving child abuse, child neglect [,] or [~~moral turpitude~~ any other offenses specified in § 63.1-198.1 of the Code of Virginia] shall be a care giver.

§ 2.5. Providers and substitute providers shall obtain [pediatric] first aid certification [, including rescue breathing and first aid for choking,] within six months of licensure or employment [or by May 31, 1994, if currently licensed] and [shall] maintain a current [pediatric] first aid certificate [endorsed by or] from:

1. The American Red Cross;

2. The American Heart Association; [~~or~~]

3. The National Safety Council for First Aid Training Institute [~~,~~ ; or]

[4. Have successfully completed, within the past three years, a pediatric first aid course equivalent to the curriculum which has been approved by the State Board of Health.]

Exception: A provider who is a RN or LPN with a current license from the Board of Nursing shall not be required to obtain first aid certification.

§ 2.6. In addition to first aid training, care givers shall obtain [a minimum of] six hours of training annually in areas such as physical, intellectual, social [,] and emotional child development, behavior management and discipline techniques, health and safety in the family day home environment, art and music activities for children, nutrition, child abuse detection and prevention, [~~and~~ or] recognition and prevention of the spread of communicable diseases.

§ 2.7. Written documentation of [pediatric first aid certification and] annual training [received by care givers] shall be maintained on file [in the family day home] for [~~two years~~ the period of licensure] . Written documentation shall include the name of [the] training session, [the] date [and total hours] of [the] session, and the name of the organization or person who sponsored the training.

Article 2.
Ratio of Adults to Children.

§ 2.8. The licensee shall ensure that the total number of children receiving care at any one time does not exceed the maximum licensed capacity of the home. [~~Note: The licensed capacity shall never exceed 12 children, exclusive of the provider's own children and children who reside in the home.~~ When at least one child receives care for compensation, all children, exclusive of the provider's own children who reside in the home, who are in the care and supervision of a care giver shall be included in the licensed capacity.]

§ 2.9. Staffing.

A. In determining the need for an assistant, the following fixed adult-to-child ratios shall be maintained for children receiving care. This ratio includes the provider's own and resident children under eight years of age:

1. 1:4 children [~~under two years~~ from birth through 15 months] of age;

[2. 1:5 children from 16 months through 23 months of age;]

[~~2.~~ 3.] 1:8 children [from] two years [~~to~~ through] four years of age;

[~~3.~~ 4.] 1:16 children [~~four years to 10~~ from five years through nine] years of age; and

[~~4.~~ 5.] Children [~~over~~ who are] 10 years of age [and older] shall not count in determining the ratio of adults to children for staffing purposes.

B. When children are in mixed age groups, the provider shall apply the following point system in determining the need for an assistant. Each [~~adult~~] care giver shall not exceed 16 points. The provider's own and resident children under eight years of age count in point maximums:

1. Children [~~under two years~~ from birth through 15 months] of age count as four points each;

[2. Children from 16 months through 23 months of age count as three points each;]

[~~2.~~ 3.] Children [from] two years [~~to~~ through] four

years of age count as two points each;

[~~3.~~ 4.] Children [~~four years to 10~~ from five years through nine] years of age count as one point each; and

[~~4.~~ 5.] Children [~~over~~ who are] 10 years of age [and older] count as zero points.

Exception: The point maximums for mixed age groups or the fixed adult-to-child ratios may be exceeded in one age group [~~by~~ for] no more than one child for up to one month [from the date of the child's enrollment] during transitional periods when there is turnover in children receiving care and when the ages of [~~children~~ the child] leaving and [the child] entering care do not match.

[§ 2.10. The provider and parent or parents of a child with special needs shall mutually determine a recommendation for the level of staffing necessary to care for, supervise, and protect a child in care with special needs based on the child's age, type of special need, and degree of disability. If subsidized care is provided for the child, the provider shall consult with the community services board worker or the local department of social services worker to review the recommendation. The provider shall report this recommendation to the department on a form provided by the department. The department's representative shall make a final determination of the level of staffing or any capacity limitations necessary to care for, supervise, and protect all children in care when a child with special needs is receiving care. The recommendation on the level of staffing shall be reviewed annually by all involved parties.]

[§ ~~2.10.~~ § 2.11.] The family day home shall comply with [local child day program ordinances, where such exist, and] any limitations which may be placed by the Uniform Statewide Building Code on the number of children for whom care may be offered.

PART III.
HOUSEHOLD.

§ 3.1. All members of the family day household 14 years of age and older including relatives, lodgers, and employees, shall be responsible, [~~wholesome,~~ of] good character and reputation, and [shall] display behavior that demonstrates emotional stability.

§ 3.2. All adult members of the family day household including relatives, lodgers, care givers, and employees shall not have been convicted of a crime involving child abuse, child neglect or [~~moral turpitude~~ any other offenses specified in § 63.1-198.1 of the Code of Virginia,] and shall have a criminal record check conducted no more than 90 days before the date of initial application.

§ 3.3. All members of the family day household 14 years of age and older including relatives, lodgers, care givers and employees [shall not be listed in the Child Protective Services Central Registry, and] shall have a Child Protective Services Central Registry clearance conducted no more than 90 days before the date of initial application.

[§ 3.4. All members of a currently licensed family day household 14 years of age and older including relatives, lodgers, care givers, and employees shall have a Child Protective Services Central Registry clearance conducted no later than January 31, 1994.]

[§ ~~3.4.~~ § 3.5.] The licensee shall ensure that a smoke-free environment is provided in rooms accessible to children while children are in care.

PART IV.
PHYSICAL ENVIRONMENT AND EQUIPMENT.

Article 1.
Physical Environment.

§ 4.1. The physical facilities and furnishings of the home and grounds shall be kept clean and safeguarded from open and obvious hazards to the health and safety of children, such as [but not limited to] loose carpeting, lead paints, choking hazards, sharp objects, plastic bags, and poisonous plants accessible to children.

§ 4.2. All rooms used by children shall be ventilated, heated in winter, and cooled in the summer to maintain adequate air exchange and required temperatures.

[~~A.~~ 1.] When windows and doors are used for ventilation, they shall be screened securely.

[~~B.~~ 2.] During winter months, a draft-free temperature of 65°F to 75°F at no more than two feet above floor level shall be maintained in all rooms used by children. During summer months, if the temperature in rooms used by children exceeds 80°F, a cooling device shall be used.

§ 4.3. All rooms, halls, and stairways used by children in care shall be well lighted.

§ 4.4. Firearms shall be stored unloaded and apart from ammunition [. Firearms and ammunition shall be stored] in a locked [~~cabinet or drawer~~ area] with keys out of reach of children.

§ 4.5. Protective barriers including but not limited to safety gates shall be installed securely at the top or bottom of open stairways on the floor where the stairways are accessible to children under two years of age [and children over two years of age who are not developmentally ready to climb or descend stairs without supervision] . Gates used shall meet the current [~~Consumer Product Safety Commission federal~~ American Society for Testing Materials] standards for juvenile products.

§ 4.6. All interior and exterior stairways [~~used by children~~] with over three risers [that are used by children] shall have handrails within the normal grasp of the children or banisters with vertical posts between the handrails and each step, which can be safely grasped by children.

§ 4.7. When stairways have banisters with vertical posts between the handrails and each step and the distance between the vertical posts is greater than 3 1/2 inches, these stairways shall be accessible to children only when supervised by a care giver.

§ 4.8. [~~Clear glass doors~~ Doors with clear glass panels] that reach within 18 inches of the floor shall be clearly marked with [~~colorful~~ decorative objects such as pictures, art work or] decals near the child's [eye] level to prevent accidents.

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

§ 4.10. [~~A~~ The home shall have indoor running water and a bathroom. The] bathroom shall be easily accessible to children two years of age and older. The bathroom shall be kept clean and have [a] working [~~toilets~~ toilet] and [~~sinks~~ sink] , tissue, and soap. Either paper towels or individually assigned cloth towels shall be provided. If cloth towels are used, they shall be laundered when soiled and at least once a week.

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

§ 4.12. Cleaning agents, disinfectants and deodorizers, plant-care chemicals, pesticides, and other poisonous materials or supplies shall be stored in areas inaccessible to children or in a cabinet or drawer with child-resistant locks.

§ 4.13. [~~Unless~~ When] water is [not] obtained from a municipal supply and the house is [not] connected to a municipal sewer line, the water supply and septic system of the family [day] home shall be inspected and approved by the local health official or a private laboratory if there are open and obvious symptoms of water or sewage system problems, such as evidence of cloudy, murky, or muddy water, or sewage back up. [Family day homes that are connected to a municipal water supply and sewer line and have open and obvious symptoms of water or sewage system problems shall have the problems corrected within a time frame agreed upon by the department and the provider.]

Article 2.
Fire and Shock Prevention and Emergency Procedures.

§ 4.14. Electrical outlet safety plugs shall be placed in all outlets that are accessible to children. These outlets shall be covered with protective or child-resistant receptacle covers or spring-loaded offset cover plates. Protective coverings and outlet plugs shall be larger than 1 1/4 inches in diameter.

§ 4.15. No electrical device accessible to children shall be placed so that it could be plugged into an electrical outlet while in contact with a water source, such as a sink, tub, shower area, toilet, or swimming or wading pool.

§ 4.16. Electrical cords [and electrical appliances and equipment with cords] that are frayed and have exposed wires shall not be used. Electrical cords shall not be overloaded or placed under carpets or stapled down to be kept in place.

§ 4.17. All flammable and combustible materials, including matches, lighters, lighter fluid, petroleum distillates, such as kerosene, turpentine and automotive products, aerosol cans [,] and alcohol shall be stored in an area inaccessible to children or in a cabinet or drawer with child-resistant locks.

§ 4.18. All alternate heating devices such as oil stoves, wood burning stoves, and fireplaces, and associated chimneys, and ventilating devices shall be inspected annually by a [~~heating and air conditioning contractor~~ qualified inspector] to verify [that] the devices are properly installed, maintained and cleaned as needed. Documentation of the completed inspection and cleaning shall be maintained by the licensee.

§ 4.19. Radiators, oil and wood burning stoves, floor furnaces, portable electric space heaters, fireplaces [,] and similar heating devices used in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

§ 4.20. Portable liquid fuel burning heaters shall not be used in areas accessible to children when children are in care.

§ 4.21. An operable type AB, BC, or, multipurpose, 2A10BC rated fire extinguisher shall be kept near the kitchen area, out of the reach of children, away from the stove, and near an exit. Instructions for use of the extinguisher shall be posted on it or be easily accessible.

§ 4.22. An operable smoke detector, [~~with~~ either battery operated or with battery backup, that has] a UL approved or equivalent mark, shall be placed on each floor of the home. Battery operated detectors shall have the batteries tested at least monthly and replaced at least annually. [Documentation of the dates when batteries are tested and replaced shall be maintained by the licensee.]

§ 4.23. There shall be a written posted emergency escape plan in the event of a fire or natural disaster which shall be taught to all care givers and to children in care who are developmentally able to understand. The escape plan shall be practiced with all care givers and children in care on a monthly basis to the point of exit from the home.

§ 4.24. Documentation shall be maintained of practiced emergency escape plans, which shall include [the] date of the event, [the] number [and ages] of children involved, [~~ages of children,~~] and [the] approximate evacuation time. Records of monthly practiced procedures shall be maintained until the license is renewed.

§ 4.25. The home shall have a working telephone. If the telephone number is unlisted, providers shall ensure that parents and the department have been given the unlisted number in writing. When changes of telephone numbers occur, providers shall inform the department within 48 hours and parents within 24 hours of the new telephone number.

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

1. A physician or hospital;

2. An ambulance or rescue squad service;

3. The local fire department;

4. The local police department;

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

5. A regional poison control center.

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

§ 4.28. If there are [open and obvious] fire hazards, the local fire prevention officials may be contacted by the department's representative. The provider shall comply with the requirements or recommendations made by the fire prevention officials to eliminate fire hazards.

Article 3.
Small Appliances and Kitchen Equipment.

§ 4.29. All small electrical appliances, such as, but not limited to, curling irons, toasters, blenders, can openers, and irons, shall be [unplugged and] placed in an area inaccessible to children [~~or in a cabinet or drawer with child-resistant latches,~~] unless [being] used by [the care giver or with] children under close supervision, e.g., when children are using these appliances in planned activities.

§ 4.30. Sharp kitchen utensils shall be placed in an area inaccesible to children or in a cabinet or drawer with child-resistant latches, unless [being] used by [the care giver or with] children under close supervision, e.g., when children are using these objects in planned activities.

§ 4.31. Electrical fans used in rooms accessible to children shall have protective shields and be placed out of the reach of children.

Article 4.
Space and Equipment for Children.

§ 4.32. The home shall provide each child with adequate space to allow free movement and active play indoors [~~or~~ and] outdoors.

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

§ 4.34. Each child shall be provided with a designated crib, cot, rest mat, or bed for resting or napping. Rest mats that are used shall have [~~comfortable~~ at least an inch of] cushioning and be sanitized [~~between each use~~ at least weekly and as needed] .

[~~A.~~ 1.] Clean linen suitable to the season, and assigned for individual use, shall be used each time children sleep on beds of family members.

[~~B.~~ 2.] Clean linen suitable to the season shall be used and washed at least weekly and as needed [~~, except for crib and playpen sheets which shall be washed daily~~] .

§ 4.35. Cribs [~~or playpens~~] that meet the current Consumer Product Safety Commission standards for cribs shall be provided for children [~~under 18 months of age~~ from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed] .

1. Double decker cribs [and play pens] shall not be used;

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

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

4. Mattresses shall fit snugly next to the crib so that no more than two fingers can be inserted between mattresses and the crib; and

5. Cribs with end panel cut-outs shall be of a size that prevents head entrapment.

§ 4.36. High chairs and infant carrier seats shall meet the American Society for Testing Materials (ASTM) standards for juvenile products and when occupied by a child a safety strap shall be used and securely fastened.

§ 4.37. Infant walkers shall not be used.

§ 4.38. [~~*Any swimming and wading pools shall be set up and maintained according to manufacturer instructions.*~~] *Outdoor swimming pools shall be enclosed by safety fences and gates with child-resistant locks and wading pools shall be emptied and stored away when not in use during the normal family day home hours of operation.*

§ 4.39. [*Any swimming and wading pools shall be set up and maintained according to manufacturer instructions.*] *No home shall maintain any receptacle or pool, whether natural or artificial, containing water in such condition that insects breeding therein may become a menace to the public health.*

PART V.
CARE OF CHILDREN.

Article 1.
Program and Services.

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

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

§ 5.3. [~~*Age*~~ *Daily age*] *appropriate activities shall include:*

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

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

3. Opportunities for one or more regularly scheduled rest or nap periods. Children unable to sleep shall be provided time and space for quiet play;

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

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

6. Opportunities for structured and unstructured play time and provider-directed and child-initiated learning activities.

§ 5.4. A sufficient supply and variety of [~~*age*~~ *developmentally*] *appropriate play* [~~*material*~~ *materials, toys,*] *and equipment shall be available* [*and accessible*] *to children in care.*

§ 5.5. Children in care shall not be shaken or bounced vigorously at any time.

§ 5.6. Television shall be used with discretion and not as a substitute for planned activities. The amount of time children watch television and the type of programs viewed shall be monitored closely [*by care givers*] .

Article 2.
Supervision.

§ 5.7. Children shall be supervised [*by a care giver*] *at all times. Children shall not be left alone* [~~*in the home*~~] *in the care of an assistant under 18 years of age* [*while in care*] .

§ 5.8. Care givers shall promptly respond to infants' needs for food and comfort.

§ 5.9. Children using infant carrier seats or high chairs shall be [~~*carefully*~~] *supervised* [~~*during meals*~~ *closely at all times*] .

§ 5.10. Play spaces for infants shall offer a diversity of experiences for the infant and provide frequent opportunities to creep, crawl, toddle and walk. The designated sleeping space for infants shall be used infrequently as a play space if it is used at any time for this purpose.

§ 5.11. An infant who falls asleep in a play space other than his own sleeping space shall be moved [*promptly*] *to his designated sleeping space* [*if the safety or comfort of the infant is in question*] .

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

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

1. Ages of the children;

2. Individual differences and abilities;

3. Layout of the house and play area;

4. Neighborhood circumstances [*, or*] *hazards; and*

5. Risk activities children are engaged in.

§ 5.14. When children are permitted to swim and wade, [~~*the*~~ *a*] *care giver shall be present at all times and able to* [*supervise the children and*] *respond immediately to emergencies. A minimum of two care givers shall be present* [*and able*] *to supervise the children when three or more children are in the water* [*, with the exclusion of wading pools*] .

Article 3.
Diapering, Toileting, and Waste Disposal.

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

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

1. Diapers shall be changed on a nonabsorbent surface. Children shall not be left unattended during diapering.

2. [~~The~~ During each diaper change the] child's genital area shall be thoroughly cleaned with a moist disposable wipe [~~during each diapering~~ or a moist, clean individually assigned cloth, if the child is allergic to disposable wipes] .

3. Soiled disposable diapers and wipes shall be discarded in a lined container, with a [~~tightly fitting~~ tight-fitting] lid, operated by a foot pedal [(step can)] . Soiled cloth diapers [and wipes] shall be put in a plastic bag and stored in [~~a diaper bag~~ individually labeled diaper bags] to be taken home. The container and diaper [~~bag~~ bags] shall be kept clean, free of soil build up and odor, and shall not be accessible to children.

4. Care givers shall wash their hands with soap or germicidal cleansing agents and water after each diaper change and after helping a child with toileting.

5. The diaper changing surface shall be cleaned with soap and water, [and] disinfected by [lightly] spraying with a germicidal or water and chlorine bleach solution, i.e., one tablespoon of bleach to one quart of water [; . The disinfectant shall be spread evenly with a paper towel over the diaper changing surface] and [the surface shall be] allowed to air dry after each [~~use~~ diaper change] . When a bleach and water solution is used, it shall be made fresh daily and stored out of the reach of children.

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

§ 5.17. Toilet chairs shall be emptied promptly, rinsed and disinfected after each use.

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

§ 5.19. Children five years of age and older shall be permitted privacy when toileting.

§ 5.20. Garbage and rubbish shall be removed from rooms occupied by children on a daily basis and removed from the premises at least [~~twice~~ once] weekly. There shall be a sufficient number of waste and diaper containers to hold all of the waste that accumulates between periods of removal.

§ 5.21. Children shall not be allowed access to refuse storage areas. Such areas shall be free of litter, odor, and uncontained waste.

Article 4.
Transportation.

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

1. Ensure that any vehicle used to transport children meets the standards set by the Code of Virginia and is equipped with the proper child restraining devices required by law to correspond with the ages of the children being transported;

2. Have a first aid kit, including an ice [or chemical cold] pack, in the vehicle used for transporting;

3. Have a copy of the parents' written authorization to transport the children;

4. Have the name, address and phone number of the family day home in the vehicle used for transportation; and

5. Have a copy of the children's emergency contact and medical information in their possession.

Article 5.
Behavior and Guidance.

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

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

1. Using limits that are fair, consistently applied and appropriate and understandable for the child's level of development;

2. Providing children with reasons for limits;

3. Giving positively worded direction;

4. Modeling and redirecting children to acceptable behavior;

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

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

§ 5.25. The following behavior shall be prohibited as methods of discipline by all care givers;

1. Corporal punishment, including hitting, spanking, beating, shaking, pinching, and other measures that produce physical pain;

2. Forcing, withdrawing, or threatening to force or withdraw food, rest, or bathroom opportunities;

3. Abusive or profane language;

4. Any form of public or private humiliation, including threats of physical punishment; and

5. Any form of emotional abuse, including rejecting, terrorizing, [~~ignoring,~~] or corrupting a child.

§ 5.26. Children shall not be physically restrained except as necessary to ensure their own safety or that of others, and then only for as long as is necessary for control of the situation.

§ 5.27. When [~~separation~~ time out] is used as a discipline technique, it shall [be used sparingly and] be brief and appropriate to the child's developmental level and circumstances. The [~~isolated~~] child [who is separated from the group] shall be in a safe, lighted, well-ventilated place and shall be within hearing and vision of the provider or substitute provider. [The child shall not be left alone inside or outside of the home while separated from the group.]

Note: If [~~separation~~ time out] is enforced by [~~an adult~~ a care giver] , it shall not exceed one minute for each year of the child's age. [~~Separation~~ Time out] shall not be used with infants.

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

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

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

Article [~~4.~~ 6.]
Nutrition and Food Services.

§ 5.31. Foods served to children for [~~breakfast,~~] lunch [~~,~~] and [~~supper~~ dinner] shall consist of a variety of items selected from each of the following food groups:

1. Meat or meat alternates

2. Fruits and vegetables

3. Bread or bread alternates, e.g., pasta, rice, noodles, and cereal

4. Milk unless a child is allergic to milk or milk products

Note: Providers shall supplement meals from homes that do not meet this standard or inform parents who provide meals from home that meals served to children must consist of a variety of foods from [~~each of~~] the four food groups.

§ 5.32. [~~Snacks~~ Breakfast and snacks that are] served to children shall include a variety of foods from two or more food groups.

§ 5.33. To assist in preventing choking, food that is hard, round, small, thick and sticky, and smooth and slippery such as [~~uncut~~ whole] hot dogs [or hot dogs sliced into rounds] , nuts, seeds, raisins, uncut grapes, uncut raw carrot, peanuts, chunks of peanut butter, hard candy, and popcorn shall not be served to children under four years of age, unless it is prepared before being served in a manner that will reduce the risk of choking, i.e., hot dogs cut lengthwise, [~~raisins and~~] grapes cut in small pieces, [and] carrots cooked or cut lengthwise.

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

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

§ 5.36. Water shall be available for drinking and shall be offered on a regular basis [~~for~~ to] all children in care.

[~~§ 5.37. Special dietary foods shall be provided as directed by a physician for individual children or in accordance with religious requirements.~~]

[~~§ 5.38.~~ § 5.37.] Meals and snacks shall be served in accordance with the times children are in care [,] which include:

1. Between the hours of 7 a.m. and 6 p.m., breakfast, lunch, and snacks shall be served.

2. Between the hours of 2 p.m. and 10 p.m., [an] afternoon snack, supper and a bed time snack shall be served.

3. Between the hours of 8 p.m. and 8 a.m. a bed time snack and breakfast shall be served.

[~~§ 5.39.~~ § 5.38.] When meals are provided by the family day home, menus shall be planned, written, dated and placed or posted at least a day in advance in an area accessible to parents.

[~~§ 5.40.~~ § 5.39.] Children's hands shall be washed with soap and water before eating meals or snacks.

[~~§ 5.41.~~ § 5.40.] Care givers hands shall be washed with soap or germicidal cleansing agent and water before

handling or serving food. Care givers shall use sanitary practices when handling and preparing foods.

[§ ~~5.42.~~ § 5.41.] Infants shall be fed on demand unless parents provide other written instructions. Infants who cannot hold their own bottles shall be picked up and held when fed. Bottles shall not be propped.

[§ ~~5.43.~~ § 5.42.] Prepared infant formula shall be labeled with the individual child's name and kept in the refrigerator when not in use.

[§ ~~5.44.~~ § 5.43.] If infant formula is heated in a microwave oven, precautions shall be taken to prevent scalding. Only refrigerated formula shall be heated. When formula is heated in the bottles, the bottles shall be upright and uncovered. Heating time shall be no more than 30 seconds for four ounce bottles and no more than 45 seconds for eight ounce bottles. After heating and replacing nipples, bottles shall be turned up and down 10 times and the temperature tested by dropping milk on the top of the hand. The temperature of the milk shall be cool on the hand.

[§ ~~5.45.~~ § 5.44.] Children shall not be allowed to eat or drink while walking, running, playing, lying down, or riding in vehicles.

[§ ~~5.46.~~ § 5.45.] Eating utensils shall be appropriate in size for children to handle and chipped or cracked dishes shall not be used.

[§ ~~5.47.~~ § 5.46.] Eating utensils and dishes shall be properly cleaned by prerinsing, washing and air drying or using a dishwasher. Eating utensils and dishes shall be stored in a clean dry place, and protected from contamination.

[§ ~~5.48.~~ § 5.47.] If disposable eating utensils and dishes are used, they shall be sturdy enough to prevent spillage or other health and safety hazards. Disposables shall be used once and discarded.

[§ ~~5.49.~~ § 5.48.] Temperatures shall be maintained at or below 40°F in refrigerator compartments and at or below 0°F in the freezer compartments. [The provider shall have an operable thermometer available to monitor these temperatures.]

[§ ~~5.50.~~ § 5.49.] All perishable foods and drinks used for children in care, except when being prepared and served, shall be kept in the refrigerator.

[§ ~~5.51.~~ § 5.50.] All milk and milk products shall be pasteurized. Powdered milk shall be used only for cooking.

PART VI.
PHYSICAL HEALTH.

Article 1.
Health Requirements for Family Day Household [Members] and Care Givers.

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

1. Initial tuberculosis examination and report.

a. Within 90 days prior to licensure, employment [,] or contact with children, each individual shall obtain a tuberculin skin test indicating the absence of tuberculosis in a communicable form.

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

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

d. The statement shall be filed in the individual's record maintained at the family day home.

Exception: An individual may delay obtaining the tuberculosis test if a statement from a physician is provided that indicates the test is not advisable for specific health reasons. This statement shall include an estimated date for when the test can be safely administered. The individual shall obtain the test no later than 30 days after this date.

2. Subsequent evaluations.

[a. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.]

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

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

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

(3) The statements shall be filed in the individual's record maintained at the family day home.

[(4)] Following the two-year period during whicl

chest x-rays are required annually, additional screening shall be obtained every two years.

[~~b. An individual who had a nonsignificant (negative) reaction to an initial tuberculin skin test shall obtain additional screening every two years thereafter.~~]

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

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

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

1. Shall be removed immediately from contact with children and food served to children; and

2. Shall not be allowed contact with children or food served to children until the condition is cleared to the satisfaction of the examining physician as evidenced by a signed statement from the physician.

Article 2.
Health Requirements for Children.

§ 6.4. Timing and frequency of medical reports.

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

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

2. Ninety days prior to [~~admission~~ enrollment] for children aged seven months through 18 months.

3. Six months prior to [~~admission~~ enrollment] for children aged 19 months through 24 months.

4. Twelve months prior to [~~admission~~ enrollment] for children two years of age through five years of age.

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

EXCEPTIONS:

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

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

[3. A child may delay obtaining immunizations if a statement from a physician is provided that indicates they are not advisable for specific health reasons. This statement shall include an estimated date for when immunizations can be safely administered. The child shall obtain the immunizations no later than 30 days after this date.]

B. Medical reports after [~~admission~~ enrollment] .

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

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

EXCEPTION: Documentation of immunizations received is not required for any child whose parent submits an affidavit to the provider stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices.

§ 6.5. Form and content of medical reports.

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

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

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

Article 3.
Illness, Injury [,] and Death.

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

1. [~~Oral~~ An oral] body temperature of 101°F [or greater or an axillary (armpit) temperature of 100°F or greater] ; or

2. Recurrent vomiting or diarrhea; or

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

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

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

2. The child shall remain in a quiet, designated area within sight [~~and~~ or] sound of the care giver [and where the care giver can respond immediately to the child] until [~~leaving~~ the child leaves] the home.

§ 6.8. When a child in care has been exposed or is suspected to have been exposed to a reportable communicable disease, [~~the parent~~ all parents of enrolled children] shall be informed on the same day contact occurs or is suspected.

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

§ 6.10. An injury or accident [sustained by a child while at the family day home that required first aid or medical attention] shall be recorded in the child's record. Information recorded shall include [the] date [and nature] of injury or accident, action taken and [~~nature of injury or accident~~ verification of parental notification] .

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

§ 6.12. The provider shall report a lost or missing child [to the department within 24 hours] when it was necessary to seek assistance from local emergency or police personnel [~~to the department within 24 hours~~] .

§ 6.13. The provider shall verbally notify the local department of social services or call the toll free number for the Bureau of Child Protective Services (1-800-552-7096/TDD) immediately whenever there is reason to suspect that a child has been or is being subjected to any kind of child abuse or neglect by any person.

Article 4.
Medication and First Aid [Supplies] .

§ 6.14. Prescription and nonprescription drugs [~~may~~ shall] only be given to a child [~~if it is recommended by a health care provider for a specific child~~ as directed by the prescription label or by the instructions on the original container] and [when] the provider has the parent's [~~or guardian's~~] written consent.

§ 6.15. All medicines shall be stored in an area inaccessible to children. All medicine shall be returned to parents when no longer needed. Prescription medicines shall be dated and kept in [the] original container with the prescription label [and the child's first and last names] attached.

§ 6.16. Any over-the-counter medication brought into the home for use by a specific child shall be [kept in the original container and shall be] labeled with the following information: the date; the child's first and last names; [and] specific, legible instructions for administration and storage [; ~~i.e., manufacturer's instructions; and the name of the health care provider who made the recommendation~~] .

§ 6.17. All medications, refrigerated or unrefrigerated, shall [~~have child protective caps~~ be kept out of reach of children] , shall be kept in an orderly fashion, and shall be stored at the proper temperature. Medication shall not be used beyond the date of expiration.

§ 6.18. The provider shall keep a medication record on each child which shall include:

1. [~~A prescription by a health care provider, if required~~ A statement acknowledging parental consent to administer medication to the child] ;

2. The amount and [~~type~~ name] of medication administered to the child;

3. The day and time the medication was administered to the child; and

4. The name of [the] provider or adult assistant administering the medication. (Assistants under the age of 18 shall not administer medication.)

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

1. Scissors;

2. Tweezers;

3. Sterile nonstick gauze pads;

4. Adhesive or bandage tape;

5. Band-aids, assorted sizes;

6. Sealed packages of alcohol wipes or an antiseptic cleaning agent;

7. An antibacterial ointment;

8. Thermometer;

9. Chemical cold pack, if ice pack not available;

10. First aid instructional manual [; ~~and~~ or cards;]

11. Insect bite or sting preparation [, ;]

12. [~~Triangular bandages~~ One triangular bandage] ;

13. Syrup of Ipecac, to be used only when instructed by the regional poison control center or child's physician [and before the expiration date] ;

14. Flexible roller or stretch gauze;

15. Disposable nonporous gloves; and

16. Eye dressing or pad.

Article 5.
Animals.

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

§ 6.21. Any pet or animal present at the home, indoors or outdoors, shall be in good health, and show no evidence of carrying any disease.

§ 6.22. Dogs or cats, where allowed, shall be immunized for [~~any diseases that can be transmitted to humans~~ rabies] and shall be [~~maintained on a flea, tick and worm control program~~ treated for fleas, ticks, or worms as needed] .

§ 6.23. Care givers shall [~~always be present~~ closely supervise children] when children are exposed to animals [~~in~~ at] the home. Children shall be instructed on safe procedures to follow when in close proximity to these animals, e.g., not to provoke or startle them or remove their food. Potentially dangerous animals shall not be in contact with children.

§ 6.24. Animal litter boxes shall not be located in areas accessible to children. All animal litter must be removed promptly from children's areas and disposed of properly.

§ 6.25. Care givers' and children's hands shall be washed after handling animals or animal wastes.

PART VII.
RECORD KEEPING RESPONSIBILITY.

§ 7.1. The provider's records shall be open for inspection by authorized representatives of the department.

§ 7.2. The family day home shall maintain a record for each enrolled child.

§ 7.3. Each child's record shall include:

1. The following identifying information:

a. The child's full name, nickname (if any), address and birthdate;

b. The name, address and telephone number of each parent;

c. The name, address, and telephone number of each parent's place of employment and work hours;

d. The name, [office] address, and telephone number of the child's physician;

e. The name, address and telephone number of one or more designated person or persons to contact in case of an emergency if the parent cannot be reached;

f. The names of persons authorized to visit, call or pick up the child as well as those who are not to visit, call or pick up the child. Appropriate custodial paperwork shall be requested and maintained when a parent requests that the provider not release the child to the other parent; and

g. The date of [~~admission~~ enrollment] and withdrawal, when appropriate;

h. Any known or suspected allergies and any chronic or recurrent diseases or disabilities;

i. The name of the parent's hospitalization plan and number or medical assistance plan and number, if applicable;

j. Results of the health examination and up-to-date immunization records of the child or a record of medical or religious exemption from these requirements; and

k. A record of any accidents or injuries sustained by the child [while at the family day home] that required first aid or medical attention.

2. The parent's signed authorization to use a substitute provider [~~and the name, address, and telephone number of the provider~~ as necessary] .

3. Completed written agreements.

a. Written agreements shall be made between the provider and the parent or parents for each child in

care. A signed copy shall be maintained with the record and one copy shall be given to the parent or parents.

b. Agreements shall cover:

(1) Hours of care per day, week, or month; cost of care per day, week, or month; frequency and amount of payment per day, week, or month; [~~schedule~~ ~~of~~ general] daily routine; and any special services to be provided by either party to the agreement;

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

(3) Procedures for emergency care in case of illness or injury [, written authorization to provide or arrange for emergency transportation,] and written authorization for emergency medical [~~care~~ treatment] if parents cannot be located immediately;

(4) [~~Discipline~~ A statement acknowledging a review of the discipline] policy [including acceptable and unacceptable discipline methods] ;

(5) Written authorization for the child to participate in specific classes, clubs, field trips, including trips outside of the immediate community, or other activities, when feasible, indicating the activity, time of [~~leaving~~ departure] and [estimated time for] returning, [~~and~~] method of transportation to the activity [,] and written consent [~~of~~ for a] designated person [other than the provider] to transport the child [~~other than the provider~~ ; [and]

[~~(6) Written authorization for a designated person to transport the child in emergency situations;~~

~~(7) Type of television programs which parents consider acceptable for children to view;~~

~~(8) A statement acknowledging that the parent has been informed of whether the provider does or does not carry liability insurance; and~~

[~~(9)~~ (6)] A statement acknowledging that there shall be an open-door policy which permits parents to visit [; ~~observe,~~] and pick up their children at any time.

§ 7.4. The provider shall not disclose or permit the use of information pertaining to an individual child or family unless the parent or parents of the child has granted written permission to do so.

§ 7.5. The emergency contact information listed in subdivision 1 e of § 7.3 shall be made available to a physician, hospital, or emergency care unit in the event of a child's illness or injury.

§ 7.6. Whenever the provider leaves the home with the children, the provider shall have copies of the emergency contact and medical information listed in subdivisions [1 b through] 1 e and 1 h through [~~1 k~~ 1 j] of § 7.3.

[~~§ 7.7. The provider shall maintain records of inspection visits, corrective action plans, and any legal actions.~~

~~§ 7.8. Training records of the care giver and any assistants shall be maintained in the family day home.~~]

[~~§ 7.9.~~ § 7.7.] The provider shall agree to share information daily with parents about their children's health, development, behavior, adjustment, or needs.

VA.R. Doc. No. R94-51; Filed September 28, 1993, 3:58 p.m.

Commonwealth of Virginia
Department of Social Services

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

I. IDENTIFYING DATA		
A. Name of Applicant to Whom License is to be issued (First, Middle/Birth Name, Last)	B. Birth Date of Applicant	
C. Street Address	D. Zip Code	
E. Mailing Address (if different from street address)	F. Zip Code	
G. Area Code/Telephone Number	H. Is the Telephone in Your Home? ____ YES ____ NO	I. Is the Telephone Number Listed? ____ YES ____ NO
J. DIRECTIONS (Give specific directions for reaching your home from central point of the nearest or main highway)		

II. ADMINISTRATION

A. REQUESTED LICENSE CAPACITY (number of children for which you wish to be licensed) Requested Capacity: Age Range: From: Through:	B. CURRENT CAPACITY (number of children receiving child care in your home now) Current Capacity: Age Range: From: Through:
C. Have you had any previous experience in caring for other people's children? ____ YES ____ NO	D. Name of Assistants, if any:
E. Name of Substitute Provider(s), if any:	
F. State below the source of your income or other type of financial resources available to you: (Code of Virginia, Section 63.1-195)	
G. Days and Hours of Normal Operation:	

III. INFORMATION ABOUT THE HOME		
A. Number of Rooms used for Child Care Activities:	B. Number of Toilets Inside Home:	C. Number of Outdoor Toilets:
D. Source of Water Supply Public Private Owned by: _____		E. Is there a septic tank? ____ YES ____ NO

IV. INFORMATION ABOUT OCCUPANTS OF THE HOME

A. Family Members Living in Your Home		
Full Name	Birth Date	Relationship to You

B. List Everyone Else Living in your Home			
Full Name	Birth Date	Relationship to You	If placed by an agency give name of agency

V. REFERENCES

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

Name	Full Address and Telephone Number

B. Have you, any adult living in your home, or any adult helping you care for children been convicted of a crime involving child abuse, child neglect, or any other offenses specified in Section 63.1-198.1 of the Code of Virginia?
_____ YES _____ NO

C. Are you, any member of your home 14 years of age and older, or any person helping you care for children listed in the Child Protective Services Central Registry? _____ YES _____ NO

D. Name and address of any agency that may have placed children in your home in the past five years.

VI. REQUIRED ATTACHMENT

A list of indoor and outdoor developmentally appropriate play equipment, materials, toys, and supplies available to children.

VII. OPTIONAL ATTACHMENTS

The following attachments are not required. However, providing these attachments would assist in expediting the processing of the application. It will enable the licensing specialist to review these documents along with the application rather than during a future on-site visit.

1. Describe provision(s) for communication with parents. Submit copies of written information to be shared with parents. The Information and Agreement Form provided by the Department of Social Services may be used.

2. Include samples of all forms developed, such as an application form, agreement form, etc., if different from the model forms provided by the Department of Social Services.

032-05-335.3 (8/93)

REQUIRED INFORMATION TO BE SUBMITTED FOR RENEWAL OF A LICENSE TO OPERATE A FAMILY DAY HOME

I. IDENTIFYING DATA

A. Name of Applicant to Whom License is to be issued (First, Middle/Birth Name, Last)	B. Birth Date of Applicant
C. Street Address	D. Zip Code
E. Mailing Address (if different from street address)	F. Zip Code

II. ADMINISTRATION

A. REQUESTED LICENSE CAPACITY (number of children for which you wish to be licensed) Requested Capacity: Age Range: From: Through:	B. CURRENT CAPACITY (number of children receiving child care in your home now) Current Capacity: Age Range: From: Through:

C. Name of Assistant (s), if any:

D. Name of Substitute Provider(s), if any:

E. State below the source of your income or other type of financial resources available to you: (Code of Virginia, Section 63.1-198)

F. Days and Hours of Normal Operation:

III. INFORMATION ABOUT THE HOME

A. Number of Rooms used for Child Care Activities:	B. Number of Toilets Inside Home:	C. Number of Outdoor Toilets:
D. Source of Water Supply Public Private Owned by: _____		E. Is there a septic tank? _____ YES _____ NO

IV. INFORMATION ABOUT OCCUPANTS OF THE HOME

A. Family Members Living in Your Home

Full Name	Birth Date	Relationship to You

B. List Everyone Else Living in your Home

Full Name	Birth Date	Relationship to You	If placed by an agency give name of agency

V. REFERENCES

A. Have you, any adult living in your home, or any adult helping you care for children been convicted of a crime involving child abuse, child neglect, or any other offenses specified in (Section) 63.1-198.1 of the Code of Virginia?

_____ YES _____ NO

B. Are you, any member of your home 14 years of age and older, or any person helping you care for children listed in the Child Protective Services Central Registry? _____ YES _____ NO

VI. GENERAL INFORMATION

A. Describe in detail any pertinent changes in your home situation since your last application, such as: any additions to the house or improvements, or major changes in the health of household members, financial changes , or new play equipment, toys or materials.

B. If present license is a provisional license, state specifically what has been done to bring your home into compliance with the Minimum Standards for Licensed Family Day Homes.

032-05-336:2 (8/93)

Staffing Recommendations for Children With Special Needs (MODEL FORM)

Child's Name: _____ Child's Age: _____

Type(s) of Disability/Special Needs: _____

Degree of Disability: Mild ___ Moderate ___ Severe ___ N/A ___

_____ _____
Family Day Home Address Telephone Number

*** Please follow the instructions on the back of form:** (Check only one)

1__ The family day home's capacity, adult to child ratios, or points do not need to be adjusted.

Explain: _____

2__ The family day home's capacity needs to be reduced by one child in this child's age group.

Explain: _____

3__ This child needs to be counted in the ratios with children in a younger age group (applies only to a child older than 15 months).

Explain: _____

Parent(s) Name(s)	Parent(s) Signature(s)	Date
Provider's Name	Provider's Signature	Date
CSB/Local DSS Representative	Representative's Signature	Date

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

FORM # 032-05-212 (9/93)

INSTRUCTIONS:

The child's parent(s) and the provider are to mutually determine a recommendation for the appropriate level of staffing they think is necessary to accommodate a child with special needs. If the cost of this child's care is subsidized, the provider must consult with the local Community Services Board caseworker or department of social services caseworker to review the recommendation. The completed form is to be signed by the parent, provider, and caseworker.

Please check only one of the recommendations on this form and explain your reason for selecting the recommendation as follows:

1. If block #1 is checked: explain how the child will be integrated into the child day program or any necessary adjustments that need to be made to accommodate the child.

2. If block #2 is checked: explain any functional limitations of the child that may require the provider to care for one less child in this child's age group (refer to the adult to child ratios).

3. If block #3 is checked: explain any functional limitations of the child that demand a similar amount of care, attention, and supervision as required for a child in a younger age group, and specify the younger age group this child needs to be counted in (refer to the adult to child ratios).

The completed form is to be sent by the provider to the family day home's regional licensing representative. After considering the recommendation, the licensing representative will notify the provider of a final determination for staffing requirements or for any capacity limitations determined as necessary to adequately meet the needs of all children in care.

The recommendation for staffing shall be reviewed annually by all involved parties to consider any changes in the child's level of functioning.

ADDITIONAL COMMENTS RELATED TO STAFFING RECOMMENDATION:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

INFORMATION AND AGREEMENT

THIS FORM COMPLIES WITH THE MINIMUM STANDARDS FOR LICENSED FAMILY DAY HOMES. THE COMPLETED FORM SHALL BE KEPT IN THE CHILD'S RECORD AT THE FAMILY DAY HOME. A COPY OF PART II AND PART III SHALL BE GIVEN TO THE PARENT(S) OR GUARDIAN.

CHILD'S FULL NAME:_____ NICKNAME:_____

ADDRESS:_____ BIRTHDATE:_____

CITY, STATE, ZIP:_____ HOME PHONE: (___)_____

A.

MOTHER	FATHER
NAME :	NAME:
ADDRESS (IF DIFFERENT):	ADDRESS (IF DIFFERENT):
CITY, STATE, ZIP	CITY, STATE, ZIP
HOME TELEPHONE (IF DIFFERENT)	HOME PHONE (IF DIFFERENT)
WORK TELEPHONE & HOURS	WORK TELEPHONE & HOURS

NAME OF PERSON HAVING LEGAL CUSTODY OF CHILD (THIS INFORMATION IS RECOMMENDED BUT NOT REQUIRED)

B. NAME OF PERSON TO CONTACT IF PARENT(S) CANNOT BE REACHED.	C. PHYSICIAN'S NAME
ADDRESS	ADDRESS
CITY, STATE, ZIP	CITY, STATE, ZIP
TELEPHONE	TELEPHONE

D. INFORMATION ABOUT SPECIAL NEEDS, ALLERGIES, FOOD HABITS (SPECIAL DIET) OR PARTICULAR PROBLEMS, CHRONIC OR RECURRENT DISEASES, AND ANY CHILDHOOD DISEASES THAT THIS CHILD HAS HAD:

E. PERSON'S AUTHORIZED TO CALL, VISIT ,OR PICK UP THE CHILD.

F. PERSON'S NOT AUTHORIZED TO CALL, VISIT, OR PICK UP THE CHILD.

032-05-011/2 (Rev. 9/93)

PART II: AGREEMENT TO BE COMPLETED BY PARENT(S) OR GUARDIAN

A. I, THE __MOTHER, __FATHER, __GUARDIAN OF _____, HEREBY AGREE TO PLACE __ HIM__ HER IN THE CARE OF _____ BETWEEN THE HOURS OF_____A.M., _____P.M. AND _____A.M., _____P.M. FOR _____DAYS A __WEEK, __MONTH.

B. I AGREE TO PAY THE SUM OF $_____PER __DAY, __WEEK, __MONTH FOR THE CARE OF THIS CHILD. PAYMENTS ARE TO BE MADE __DAILY, __WEEKLY, __MONTHLY.

C. I AGREE TO ARRANGE FOR THE NECESSARY MEDICAL EXAMINATION AND IMMUNIZATIONS IN ACCORDANCE WITH THE MINIMUM STANDARDS FOR LICENSED FAMILY DAY HOMES WITHIN 30 DAYS BEFORE OR AFTER ENROLLMENT AND ANNUALLY THEREAFTER. (MEDICAL OR RELIGIOUS EXEMPTION COMPLETED? ___YES ___NO ___N/A.)

D. IN ADDITION, I AGREE TO PROVIDE THE FOLLOWING (SPECIFY:)_____

E. I AUTHORIZE THE FAMILY DAY PROVIDER TO OBTAIN IMMEDIATE MEDICAL CARE FOR MY CHILD IF AN EMERGENCY OCCURS AND I CANNOT BE LOCATED IMMEDIATELY.

I AGREE TO PICK UP MY CHILD AS SOON AS POSSIBLE WHEN NOTIFIED THAT HE OR SHE IS ILL.
I UNDERSTAND THAT THE FAMILY DAY PROVIDER MY GIVE NONPRESCRIPTION MEDICATION ONLY AS DIRECTED BY THE INSTRUCTIONS ON THE ORIGINAL CONTAINER AND WITH MY WRITTEN CONSENT.
I UNDERSTAND THAT THE FAMILY DAY PROVIDER MAY GIVE PRESCRIPTION MEDICATION ONLY AS DIRECTED BY THE AUTHENTIC PRESCRIPTION LABEL AND MY WRITTEN CONSENT.

F. I __ AUTHORIZE, __DO NOT AUTHORIZE MY CHILD TO PARTICIPATE IN COMMUNITY ACTIVITIES. LIST SUCH ACTIVITIES, TIMES, AND METHODS OF TRANSPORTATION:_____

G. AUTHORIZATION FOR OUT OF TOWN FIELD TRIPS WILL BE GIVEN ON AN INDIVIDUAL BASIS.

H. OTHER AGREEMENTS OR ACKNOWLEDGEMENTS:_____

SIGNATURE OF PARENT(S) OR LEGAL GUARDIAN:_____ DATE:_____

ADDRESS:_____

032-05-011/2 (Rev. 9/93)

PART III: AGREEMENT TO BE COMPLETED BY LICENSED FAMILY DAY PROVIDER

A. I, _____ LICENSED BY THE VIRGINIA DEPARTMENT OF SOCIAL SERVICES TO CARE FOR CHILDREN IN MY FAMILY DAY HOME, AGREE TO PROVIDE CHILD CARE FOR _____(CHILD'S FULL NAME) BEING ENROLLED ON THE _____ DAY OF _____ ,19__.

B. IN ADDITION TO CARING FOR THIS CHILD DURING THE HOURS SPECIFIED IN PART II, I AGREE TO PROVIDE THE FOLLOWING SERVICES (IF ANY):_____

_____

AS LONG AS THE SUM OF $_____ IS PAID __DAILY, __WEEKLY, __MONTHLY.

C. I AGREE TO NOTIFY THE PARENT(S) OR GUARDIAN IF THEY CAN BE LOCATED, OR THE AUTHORIZED PERSON NAMED IN PART I, WHENEVER THE CHILD BECOMES ILL.

D. I AGREE TO GIVE NONPRESCRIPTION MEDICATION ONLY AS DIRECTED BY THE INSTRUCTIONS ON THE ORIGINAL CONTAINER AND WITH WRITTEN CONSENT FROM THE PARENT(S) OR GUARDIAN.
I AGREE TO GIVE PRESCRIPTION MEDICATION ONLY AS DIRECTED BY THE AUTHENTIC PRESCRIPTION LABEL AND WITH WRITTEN CONSENT FROM THE PARENT(S) OR GUARDIAN.

E. I AGREE TO REQUIRE WRITTEN PERMISSION FROM THE PARENT(S) OR GUARDIAN EACH TIME BEFORE I TAKE THE CHILD ON A FIELD TRIP.

F. OTHER AGREEMENTS OR ACKNOWLEDGEMENTS: _____

_____

_____

_____

_____

_____

_____

SIGNATURE OF LICENSED FAMILY DAY PROVIDER:_____ DATE_____

ADDRESS:_____

DATE CHILD WITHDRAWN FROM HOME:_____

032-05-011/2 (Rev. 8/93)

VIRGINIA WORKERS' COMPENSATION COMMISSION

Title of Regulation: **VR 405-01-06. Rules of the Virginia Workers' Compensation Commission.**

Statutory Authority: § 65.2-210 of the Code of Virginia.

Effective Date: January 1, 1994.

Summary:

These Rules of the Virginia Workers' Compensation Commission concern prehearing, hearing and review procedures and general rules of procedure.

VR 405-01-06. Rules of the Virginia Workers' Compensation Commission.

These rules are issued to provide procedures to identify and resolve disputed issues promptly through informal dispute resolution or hearing.

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

"Act" means the Virginia Workers' Compensation Act.

"Commission" means the Virginia Workers' Compensation Commission.

"Employer" includes the employer's insurance carrier unless the context otherwise requires.

[~~I.~~ *Rule 1*] . *Prehearing Procedures.*

[~~*Rule 1. Employee's original claim for benefits; change in condition; employer applications.*~~]

[~~A.~~ *1.1.*] *Employee's original claim for benefits. An employee's original claim for benefits shall be filed* [~~*under*~~ *within the*] *applicable statutes of limitation.*

[~~1.~~ *A.*] *An original claim for benefits shall be in writing, signed and should set forth the following:*

[~~a.~~ *1.*] *Employee's name and address;*

[~~b.~~ *2.*] *Employer's name and address;*

[~~c.~~ *3.*] *Date of accident or date of communication of occupational disease;*

[~~d.~~ *4.*] *Nature of injury or occupational disease;*

[~~e.~~ *5.*] *Benefits sought: temporary total, temporary partial, permanent total, permanent partial or medical benefits;*

[~~f.~~ *6.*] *Periods of disability, if appropriate.*

[~~2.~~ *B.*] *An original claim will not be docketed until medical evidence to support the claim is filed.*

[~~B.~~ *1.2.*] *Employee's claim on the ground of change in condition or other relief.*

[~~1.~~ *A.*] *A change in condition claim must be in writing and state the change in condition relied upon. A copy of the claim should be sent to the employer.*

[~~2.~~ *B.*] *Additional compensation may not be awarded more than 90 days before the filing of the claim with the commission. Requests for cost of living supplements are not subject to this limitation.*

[~~3.~~ *C.*] *A claim for change in condition will not be docketed until medical evidence is filed to support the change in condition.*

[~~4.~~ *D.*] *Any other claim shall specify the relief sought and will not be docketed until supporting evidence is received.*

[*1.3. Dismissal upon failure to file supporting evidence. If supporting evidence is not filed within 90 days after an employee's claim is filed, it may be dismissed upon motion of the employer after notice by the commission to the parties.*]

[~~C.~~ *1.4.*] *Employer's application for hearing.*

[~~1.~~ *A.*] *An employer's application for hearing shall be in writing and shall state the grounds and the relief sought. At the time the application is filed with the commission, a copy of the application and supporting documentation shall be sent to the employee and a copy to the employee's attorney, if represented.*

[~~2.~~ *B.*] *Each change in condition application filed by an employer under § 65.2-708 of the Code of Virginia shall:*

[~~a.~~ *1.*] *Be in writing;*

[~~b.~~ *2.*] *Be under oath;*

[~~c.~~ *3.*] *State the grounds for relief; and*

[~~d.~~ *4.*] *State the date for which compensation was last paid.*

[~~3.~~ *C.*] *Compensation shall be paid through the date the application was filed, unless:*

[~~a.~~ *1.*] *The application alleges the employee returned to work, in which case payment shall be made to the date of the return* [~~*to work*~~] .

[~~b.~~ *2.*] *The application alleges a refusal of selective employment or medical attention or examination, in which case payment shall be made to the date of the*

refusal or 14 days before filing, whichever is later.

[~~c.~~ 3.] The application alleges a failure to cooperate with vocational rehabilitation, in which case payment [~~shall~~ must] be made [~~to~~ through] the date the application is filed.

[~~d.~~ 4.] An employer files successive applications, in which case compensation shall be paid through the date required by the first application. If the first application is rejected, payment shall be made through the date required by the second application.

[~~e.~~ 5.] The same application asserts multiple allegations, in which case payment is determined by the allegation that allows the earliest termination date.

[~~4.~~ D.] An employer may file a change in condition application while an award is suspended.

[~~5.~~ E.] No change in condition application under § 65.2-708 of the Code of Virginia shall be accepted unless [~~payments were made~~ filed] within two years from the date compensation was last paid pursuant to an award.

[~~6.~~ F.] A change in condition application may be accepted and docketed when payment of compensation continues.

[~~D.~~ 1.5.] Acceptance or rejection [of claim or application] .

[~~1.~~ A.] After receipt, the commission shall review the claim or application for compliance with the Workers' Compensation Act and Rules of the Commission.

[~~2.~~ B.] The commission may order the employer to advise whether the employee's claim is accepted or to provide reasons for denial.

[~~a.~~ 1.] Response to the order shall be considered a required report pursuant to § 65.2-902 of the Code of Virginia.

[~~b.~~ 2.] The employer's response to this order shall not be considered part of the hearing record.

[~~3.~~ C.] If the employer's application is technically acceptable, the opposing party shall be permitted up to 15 days from the date the application was filed to present evidence in opposition to the application.

[~~a.~~ 1.] Pending acceptance or rejection of the application, the employer may suspend or modify compensation payments as of the date for which compensation was last paid.

[~~b.~~ 2.] If rejected, the commission shall advise the employer of the reason for rejection and compensation shall be reinstated immediately.

[~~c.~~ 3.] If accepted, the application shall be referred:

[~~(1)~~ a.] For dispute resolution,

[~~(2)~~ b.] For decision on the record, or

[~~(3)~~ c.] For an evidentiary hearing.

[~~E.~~ 1.6.] Review of decision accepting or rejecting claim or application.

[~~1.~~ A.] A [request for] review of a decision accepting or rejecting a change in condition claim or application shall be filed within 20 days from date of the decision. No oral argument is permitted.

[~~2.~~ B.] The letter requesting a review should specify each determination of fact and law to which exception is taken. A copy of the request shall be sent to the opposing party.

[~~3.~~ C.] The opposing party shall have [~~five~~ 10] days from the date the review request is filed to provide a written response to the commission.

[~~4.~~ D.] Only information contained in the file at the time of the original decision along with the review request and any response from the opposing party will be considered. Additional evidence will not be accepted.

[~~5.~~ E.] If [~~the~~] rejection of [~~the~~ a] claim or application is affirmed on review, the penalty and interest provisions of §§ 65.2-524 and 65.2-707 of the Code of Virginia shall apply from the date the application was initially rejected.

[~~Rule 2. Informal dispute resolution and decision on the record.~~

~~A. At the request of either party, or at the commission's direction, any case involving contested issues may be evaluated and referred for dispute resolution. Examples of limited issues often subject to prompt resolution are:~~

~~1. Average weekly wage;~~

~~2. Closed periods of disability;~~

~~3. Change in treating physician;~~

~~4. Contested medical issues including bills;~~

~~5. Permanent disability ratings;~~

~~6. Return to work;~~

~~7. Failure to report incarceration, change in address or return to work;~~

~~8. Attorney fee disputes;~~

~~9. Other issues which are ready for prompt determination.~~

~~B. 1. Informal dispute resolution. The commission will screen claims and applications for hearing. When it appears that a claim may be resolved by informal dispute resolution, the commission may refer the case to a commission representative who will schedule the parties for personal appearance or telephone conference during which the commission will attempt to identify disputed issues and to bring about resolution through agreement. Parties need not be represented by counsel. If agreement is reached it shall be reduced to writing and shall be binding.~~

~~2. Decision on the record. When it appears that there is no material dispute of fact as to any contested issue, determination should proceed on the record without formal hearing. After each party has been given the opportunity to file a written statement of the evidence supporting a claim or defense, the commission shall enter a decision on the record.~~

~~a. Written statements. When the commission determines that decision on the record is appropriate, the parties shall be given 20 days to submit written statements and evidence. Ten additional days shall be given to respond. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be furnished to the commission and all parties.~~

~~b. Review. Request for review of decision on the record shall proceed under § 65.2-705 of the Code of Virginia and Rule 9.~~

~~3. Referral to hearing docket. If it is determined that material issues of fact are in dispute or that oral testimony will be required, the case shall be referred to the docket for evidentiary hearing on those issues which are not agreed or determined by decision on the record.~~

[~~Rule 3.~~ 1.7.] Compromise settlement; lump sum payment.

A. A proposed compromise settlement shall be submitted to the commission in the form of a petition setting forth:

1. The matters in controversy;

2. The proposed terms of settlement;

3. The total of medical and indemnity payments made to date of submission [and the date through which all medical expenses will be paid] ;

4. The proposed method of payment;

5. Such other facts as will enable the commission to determine if approval serves the best interests of the claimant or the dependents.

B. The petition shall be signed by the claimant and, if represented, an attorney and by the other parties or their attorneys. An endorsing attorney must be licensed to practice in Virginia.

C. The petition shall be accompanied by:

1. A medical report stating the claimant's current condition and whether the injuries have stabilized;

2. An informational letter from the claimant or counsel stating whether the claimant is competent to manage the proceeds of the settlement and describing the plan for managing the proceeds;

3. A notarized affidavit attesting the claimant's understanding of and voluntary compliance with the terms of the settlement; and

4. A fee statement endorsed by the claimant and the claimant's attorney.

D. If the proposed settlement contemplates payment in a lump sum, the petition shall set forth in detail the facts relied upon to show that the best interests of the employee or the dependents will be served thereby.

If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is [~~rated A+ by A.M. Best & Company or comparable rating by another company~~ authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth] and that [,] in case of default, the employer or carrier shall remain responsible for payment.

[E. The parties shall submit an original proposed order, properly endorsed.

F. Payment shall be due within 10 days after entry of the order approving the compromise.]

[~~Rule 4.~~ 1.8.] Discovery.

A. Scope and method. The scope of discovery shall extend only to matters which are relevant to issues pending before the commission and which are not privileged. [It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.] Discovery may be obtained by oral or written deposition, interrogatories to parties, production of documents or things, [requests for admission,] inspection of premises or other means of inquiry approved by the commission.

B. Limiting discovery. The commission may limit the frequency or extent of discovery if it is unreasonably cumulative, duplicative, expensive or if the request was not timely made. The commission will consider the nature and importance of the contested issues, limitations on the parties' resources and whether the information may be

obtained more conveniently and economically from another source.

C. Stipulation to discovery. Except as specifically provided by these rules, the parties may by written stipulation agree to other methods of discovery or provide that depositions may be taken before any person, at any time or place, upon any notice and in any manner and when so taken may be used like other depositions.

D. Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement a response to include information thereafter acquired unless such information materially affects a prior response.

E. Protective order. Upon good cause shown, the commission may enter an order limiting discovery to protect a party, a witness, or other person from embarrassment, oppression, or undue burden or expense.

F. Subpoenas. A party requesting a subpoena for witness or subpoena duces tecum shall prepare the subpoena and submit it to the commission for insertion of return date and clerk certification; a check or money order for service fee, payable to the appropriate sheriff's office, shall accompany the request. The commission shall forward the subpoena and service fee to the designated sheriff's office, unless requested to do otherwise.

Subpoenaed records may be made returnable to the requesting party or, at the direction of the commission, to the clerk of the commission or to a regional office. If subpoenaed records contain medical reports they shall be filed with the commission pursuant to Rule [~~4(L)~~ 4.2] .

Requests for subpoenas may be filed with the commission at Richmond or in the regional office assigned to hear the case. [~~Requests not timely filed will not be honored except when authorized by the commission for good cause shown.~~]

1. Subpoenas for witnesses. Requests should be filed at least 10 days prior to hearing.

2. Subpoenas duces tecum. Requests should be filed at least 15 days before hearing and the subpoena shall describe with particularity the materiality of the documents or articles to be produced.

All requests for subpoenas duces tecum shall be served on each counsel of record, or the unrepresented party, by delivering or mailing a copy to each on or before the day of filing. Each request shall have appended either acceptance of service or a certificate that copies were served in accordance with the law, showing the date of delivery or mailing.

G. Depositions. After a claim or application has been filed, any party may take the testimony of any person, including a party, by deposition upon oral examination or upon written questions.

The attendance of witnesses may be compelled by subpoena. The deposition of a party or physician may be taken without permission of the commission. Leave of the commission shall be obtained to take the deposition of any other persons. Depositions shall be taken in accordance with the requirements and limitations of the Rules of the Supreme Court of Virginia governing actions at law unless the parties stipulate to discovery as set forth in Rule [~~4 C~~ 1.8 (C)] , supra.

For good cause shown the deposition of an attending panel physician may be ordered to be taken at the expense of the employer if the physician has not prepared and completed an Attending Physician's Report (Form 6) or has not otherwise prepared written reports which are sufficient to answer questions concerning injury, diagnosis, causation, disability and other matters not stipulated and deemed by the commission to be material to a claim or to a defense. [The expenses of such depositions are subject to the approval of the commission.]

[~~Upon timely application and, if deposition is deemed to be necessary for the proper adjudication of a claim or defense, the commission may compel the testimony of an attending physician.~~

Depositions shall be filed with the commission and be made a part of the record.]

H. Interrogatories to parties. After a claim or application has been filed, interrogatories limited to contested issues may be served by one party on another party [, more than 21 days before hearing] without prior commission approval.

Answers [under oath] to each interrogatory are to be filed within 21 days after service. Objections must be included with answers. If there is objection to an interrogatory and the party serving the interrogatory moves the commission for relief, the hearing officer shall enter an order resolving the issue, after giving the parties an opportunity to state their positions in writing.

No party shall serve upon any other party, at one time or cumulatively, more than [~~10~~ 15] interrogatories, including all parts and subparts, without leave of the commission for good cause shown. Leave shall be timely requested in writing. Relevant interrogatories should be served promptly upon commencement of a contested claim.

It is not necessary to file interrogatories or answers with the commission unless they are the subject of a motion.

I. Request for admission. After a claim or application has been filed, a party may serve upon any other party a written request for the admission of the truth of any material matter.

Each request must be numbered and set forth separately. Copies of documents shall be served with the request unless they have been furnished or made available for inspection and copying.

An admission under this rule may be used only for providing evidence in the proceeding for which the request was made and shall not have force or effect with respect to any other claim or proceeding. An admission or denial must be offered in evidence to be made part of the record. [A party is required to respond within 30 days or be subject to compliance under Rule 1.8 (K) or sanctions under Rule 1.2.]

J. Production of wage information. If the average weekly wage is contested, the employer shall timely file a wage chart showing all wages earned by an employee in its employment for the term of employment, not to exceed one year before the date of injury.

If an employee has earned wages in more than one employment, the employee shall have responsibility for filing information concerning wages earned in an employment other than the one in which claim for injury is made.

[~~K. Production of medical records and reports. All medical reports received by any party shall be sent immediately to the opposing party. The original or legible copy shall be filed with the commission.~~

~~All reports and records of physicians and reports for medical care directed by physicians may be admitted in evidence as testimony by physicians or medical care providers. Upon timely motion, any party shall have the right to cross-examine the source of a medical document offered for admission in evidence.~~]

[~~L.~~ K.] Failure to make discovery; to produce documentary evidence; to comply with request for admission. A party, upon reasonable notice to other parties and all persons affected thereby, may request an order compelling discovery as follows:

A timely request in writing in the form of a motion to compel discovery may be made to the commission or to such regional office of the commission where an application is assigned to be heard.

Failure of a deponent to appear or to testify, failure of a party on whom interrogatories have been served to answer, failure of a party or other person to respond to a subpoena for production of documents or other materials, or failure to respond to a request for admission shall be the basis for an order addressing a request to compel compliance or for sanctions, or both.

[~~M.~~ L.] Disposition of discovery material. Any discovery material not admitted in evidence and filed in the commission may be destroyed by the clerk of the commission after one year from entry of a final decision of the commission or appellate court.

[1.9. Informal dispute resolution. At the request of either party, or at the commission's direction, contested claims and applications for hearing will be evaluated and may be referred for informal dispute resolution. When it appears that a claim may be resolved by informal dispute resolution, the commission will refer the case to a commission representative who may schedule the parties for personal appearance or telephone conference. The commission will attempt to identify disputed issues and to bring about resolution through agreement. Parties need not be represented by counsel. If agreement is reached it shall be reduced to writing and shall be binding.

Examples of limited issues often subject to prompt resolution are:

A. Average weekly wage;

B. Closed periods of disability;

C. Change in treating physician;

D. Contested medical issues including bills;

E. Permanent disability ratings;

F. Return to work;

G. Failure to report incarceration, change in address or return to work;

H. Attorney fee disputes.

If there is no agreement between the parties and there is no material fact in dispute, issues may be referred for decision on the record. If it is determined that material facts are in dispute or that oral testimony will be required, the case will be referred to the docket for evidentiary hearing.]

[~~Rule 5.~~ 1.10.] Willful misconduct. If the employer intends to rely upon a defense under § 65.2-306 of the Act, it shall [give to the employee and] file with the commission no [~~more than 45 days after the date of Notice of Referral of Application to Docket~~ less than 15 days prior to the hearing] , a [~~statement~~ notice] of its intent to make such defense together with a statement of the particular act [~~or acts~~] relied upon as showing willful misconduct. [~~A copy shall be furnished to the employee or his attorney with the employer's Prehearing Statement.~~]

[~~Rule 6.~~ 1.11.] Prehearing statement. [~~Each party shall, within 45 days after the date of Notice of Referral of Application to Docket (Form...) file a Prehearing Statement (Form...) in accordance with the instructions on the statement. The Prehearing Statement shall be considered a required report subject to the provisions of § 65.2-902 of the Code of Virginia.~~

~~The Prehearing Statement shall contain information concerning claims, defenses, stipulations, average weekly wage, witnesses, including identification of medical reports and depositions to be relied upon at hearing, and exhibits to be offered at hearing.~~

~~All claims and defenses shall be identified in the Prehearing Statement. Any claim or defense not identified shall be considered at hearing only upon leave of the commission.~~ The commission may require a prehearing statement by the parties as to the particulars of a claim and the grounds of defense.]

[~~Rule 7.~~ 1.12.] Enforcement of the Act and Rules of the Commission; sanctions. In addition to the statutory authority of the commission to levy fines [~~and penalties~~] , [to assess attorney fees] and punish contempt, the commission may enforce its rules and the provisions of the Workers' Compensation Act upon motion of a party, or upon its own motion, after giving a party or other interested person the opportunity to be heard, by imposition of the following sanctions:

A. Rejection of pleading including, but not limited to, all or [~~parts~~ part] of [~~claims~~ a claim] and grounds of defense;

B. Exclusion of evidence from the record;

C. Dismissal of a claim or application [; .]

[~~D. Imposition of costs, including attorney fees, upon either the offending party or an attorney or both.~~]

[~~II.~~ Rule 2.] Hearing [~~Procedure~~ Procedures] .

[At the request of either party, or at the commission's direction, contested issues not resolved informally through prehearing procedures will be referred for decision on the record or evidentiary hearing.

2.1. Decision on the record. When it appears that there is no material fact in dispute as to any contested issue, determination will proceed on the record. After each party has been given the opportunity to file a written statement of the evidence supporting a claim or defense, the commission shall enter a decision on the record.

A. Written statements. When the commission determines that decision on the record is appropriate, the parties shall be given 20 days to submit written statements and evidence. Ten additional days shall be given to respond. For good cause shown additional time may be allowed. Copies of all written statements and evidence shall be furnished to the commission and all parties.

B. Review. Request for review of decision on the records shall proceed under § 65.2-705 of the Code of Virginia and Rule 3.]

[~~Rule 8.~~ 2.2.] Evidentiary [~~hearings~~ hearing] . An evidentiary hearing by the commission shall be conducted as a judicial proceeding. All witnesses shall testify under oath and a record of the proceeding shall be made. Except for rules which the commission promulgates, it is not bound by statutory or common law rules of pleading or evidence nor by technical rules of practice.

The commission [~~shall conduct hearings~~ will take evidence at hearing] and make inquiry into the questions at issue to determine the substantial rights of the parties [: , and to this end] hearsay evidence may be received. The party having the burden of proof shall have the right to open and close. Each party shall be allowed 20 minutes in which to present evidence unless prior arrangement is made through the commission to extend hearing time.

A. Continuances. The parties should be prepared to present evidence at the time and place scheduled for hearing. A motion to continue will be granted only when it appears that material or irreparable harm may result if not granted.

B. Evidence.

[1.] Stipulations to agreed facts shall be included in the record. Each exhibit offered shall be marked and identified, and the record shall show whether it was admitted in evidence.

[~~The parties shall specifically designate, by author, deponent and date, medical reports, records or depositions to be received in evidence. Those portions of a deposition to be included in the record must be specifically identified by page and line.~~

~~Only those medical reports, records or deposition portions designated by the parties or the commission may be admitted into evidence.~~]

[2. Reports and records of physicians and reports of medical care directed by physicians may be admitted in evidence as testimony by physicians or medical care providers. Upon timely motion, any party shall have the right to cross-examine the source of a medical document offered for admission in evidence.

3. The parties shall specifically designate, by author, deponent and date, medical reports, records or depositions to be received in evidence. Those portions of a deposition to be included in the record must be specifically identified by page and line.

4. Medical reports, records or deposition portions designated by the parties or included by the commission will be admitted into evidence.]

[~~III.~~ Rule 3.] Posthearing [~~Procedure~~ Procedures] .

[~~Rule 9. Review by the commission.~~]

[~~A.~~ 3.1.] Request for review. [~~Any~~ A] request for revie

of a decision or award of the commission shall be filed by a party in writing with the clerk of the commission within 20 days of the date of such decision or award.

[~~The~~ A] request for review should assign as error specific findings of fact and conclusions of law. Failure of a party to assign any specific error in its request for review may be deemed by the commission to be a waiver of [~~that~~ the party's] right [to consideration of that error. The commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues.]

A copy of the request for review shall be furnished to the opposing party. Upon request to the clerk, a party may obtain a copy of the hearing transcript subject to an appropriate charge.

[~~B.~~ 3.2.] Written statements. The commission will advise the parties of the schedule for filing brief written statements supporting their respective positions. The statements shall address all errors assigned, with particular reference to those portions of the record which support a party's position. [~~The commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues.~~]

[~~C.~~ 3.3.] Additional testimony. No new evidence may be introduced by a party at the time of review except upon agreement of the parties. [A petition to reopen or receive after-discovered evidence may be considered only upon request for review.]

[~~Any~~ A] petition [~~for reopening of the case and taking of additional testimony~~ to reopen the record for additional evidence] will be favorably acted upon by the full commission only when it appears to the commission that such course is absolutely necessary and advisable and also when the party requesting the same is able to conform to the rules prevailing in the courts of this state for the introduction of after-discovered evidence.

[~~A petition to reopen a case or to receive after-discovered evidence may be considered only upon request for review.~~]

[~~D.~~ 3.4.] Oral argument. A party may request oral argument at the time of application for review. Otherwise, the review shall proceed on the record.

If oral argument is requested and the commission considers it [~~to be~~] necessary or [~~to be~~] of probable benefit to the parties or to the commission in adjudicating the issues, the parties will be scheduled to present oral argument.

Any party may request the commission to schedule argument by telephone conference by giving notice to the clerk of the commission and to opposing counsel at least five days before the scheduled date for argument.

Each side will be limited to no more than 15 minutes for presentation of oral argument.

If oral argument is requested and the requesting party fails to appear in person or by scheduled telephone conference, the commission [~~will~~ may] impose sanctions in the absence of good cause shown.

[~~IV. General Rules.~~]

Rule [~~10.~~ 4.] Filing documents.

[~~A.~~ 4.1.] Agreements. [~~All written agreements concerning payment or termination of compensation shall be filed with the commission immediately upon their execution.~~ All agreements as to payment of compensation shall be reduced to writing by the employer and promptly filed with the commission. If the claim is denied the employer shall notify the employee and the commission promptly in writing.]

[~~B.~~ 4.2.] Medical reports. The original or a legible copy of all medical reports received by an employer or an employee relating to a claim shall be filed immediately with the commission. A copy of all reports shall be furnished to the opposing party. All medical reports relevant to a claim shall be required reports subject to provisions of § 65.2-902 of the Code of Virginia. Failure by a party to file a medical report shall be grounds for imposing sanctions. Required reports shall also include:

[~~1.~~ A.] Commission Form 6 or equivalent;

[~~2.~~ B.] Attending physician's notes and reports;

[~~3.~~ C.] Emergency room reports;

[~~4.~~ D.] Operative notes;

[~~5.~~ E.] Hospital admission and discharge summaries;

[~~6.~~ F.] Cumulative progress notes; and

[~~7.~~ G.] Return to work or disability slips.

A medical care provider attending an injured employee shall, upon request from an employer or an employee, furnish a copy of required reports, at no cost except for a nominal copying charge.

A medical care provider is entitled to a reasonable fee for preparation of a narrative report written in response to a request from a party if the report requires significant professional research or preparation.

Rule [~~11.~~ 5.] Cost of medical services. A claimant under an award shall not be liable for the cost of medical services [~~causally related to the compensable injury by accident or occupational disease~~ payable under the Act] .

Rule [~~12.~~ 6.] Award of attorney's fees under § 65.2-714 of the Code of Virginia.

[~~A.~~ 6.1.] Agreement between parties as to a fee. An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if agreement is reached and [~~the following~~ an order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee,] is submitted to the commission : .]

[~~1. An order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee; and~~

~~2. Evidence that the claim was contested.~~]

[~~B.~~ 6.2.] Parties fail to agree on a fee.

[~~1.~~ A.] An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the parties cannot agree, upon filing [of] a [~~motion with the commission and submission of the following~~ statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested, and certification that] :

[~~a.~~ 1.] [~~Evidence that~~] The claim was contested [or that the defense was abandoned] ;

[~~b.~~ 2.] [~~A statement from counsel that~~] Prior to the filing of a request with the commission the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;

[~~c.~~ 3.] [~~Evidence that~~] The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made;

[~~d. A statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested; and~~]

[~~e.~~ 4.] [~~Certification that~~] A copy of the motion has been sent to each carrier and health care provider identified.

[~~2.~~ B.] If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice [~~shall~~ must] state the amount of the medical charge recovered for the carrier or provider, the amount of the attorney's fee requested and the time and place of the hearing.

Rule [~~13.~~ 7.] Employer responsibilities.

[~~A.~~ 7.1.] Proof of insurance coverage. Every employer subject to the Act shall file with the commission proof of compliance with the insurance provisions (§§ 65.2-800 and 65.2-801) of the Act. A notice from the insurer (Form No. 45F) certifying this fact will be received as acceptable proof.

[~~B.~~ 7.2.] Posting notices. Every employer subject to the Act shall post and keep posted, conspicuously, in the plant, shop or place of business at a location frequented by employees, notice of compliance with the provisions of the Act. Such notice shall follow substantially the form prescribed by the commission. The commission will supply employers with printed notices upon request. Failure by an employer to give such notice to an employee may constitute waiver of the notice defense pursuant to § 65.2-600 of the Code of Virginia.

Rule [~~14.~~ 8.] Self-insurance.

[~~A.~~ 8.1.] The Commonwealth of Virginia, its municipalities and political subdivisions. Permission for self-insurance will be granted by the commission to the Commonwealth and its political subdivisions and to Virginia municipalities upon application for certification, without submission of proof of financial ability and without deposit of bond or other security. However, the premium tax provided for in § 65.2-1006 of the Act shall be paid.

[~~B.~~ 8.2.] Confidentiality of self-insurer information. No record of any information concerning the solvency and financial ability of any employer acquired by a commissioner or his agent by virtue of his powers under the Act shall be subject to inspection; nor shall any information in any way acquired for such purposes by virtue of such powers be divulged by a commissioner or his agent, unless by order of the court, so long as said employer shall continue solvent and the compensation legally due from him, in accordance with provisions of the Act, shall continue to be paid.

Rule [~~15.~~ 9.] Payment of compensation.

[~~A.~~ 9.1.] Waiting period. If the employee is not paid wages for the entire day on which the injury occurred, the seven-day waiting period prescribed by the Act shall include the day of injury regardless of the hour of the injury.

All days or parts of days when the injured employee is unable to earn a full day's wages, or is not paid a full day's wages, due to injury, shall be counted in computing the waiting period even though the days may not be consecutive.

[~~B.~~ 9.2.] Direct ~~payments~~ payment] . All compensation due an injured employee or compensation awarded on account of death under the Act [~~shall~~ must] be paid directly to the beneficiary in accordance with the award. This ruling applies whether or not the employee is represented.

Compensation awarded shall be paid promptly and in strict accordance with the award issued by the commission. When an award provides for an attorney fee, the employer shall pay the fee directly to the attorney unless there is alternative provision in the award.

[~~C. Payment without award. The payment of compensation without award for a period of 60 days after the date of an alleged injury shall be deemed acceptance of that claim as compensable. Upon satisfactory proof of such payment, an award of compensation and medical expenses may be entered by the commission. Such award shall be subject to subsequent modification retroactively as conditions merit.~~]

Rule [~~16.~~ 10.] X-ray evidence for coal workers' pneumoconiosis claims.

[10.1. Limitation on x-ray submissions.] In any claim for first, second, or third stage pneumoconiosis under § 65.2-504 of the Code of Virginia, the employer and the employee each shall be limited to submission of not more than three medical interpretations (readings) of x-ray evidence without regard to the number of x-rays. For good cause shown, additional interpretations may be received as evidence if deemed necessary by the commission.

[10.2. Reading by pulmonary committee.] Any party to a contested claim, or the parties upon agreement, may submit the x-ray evidence to the commission for interpretation by the Pulmonary Committee. If a party agrees to accept the x-ray reading of the Pulmonary Committee as the binding classification, the costs of evaluation shall be borne by the commission.

[~~B.~~ 10.3.] Appointment of Pulmonary Committee. The commission shall appoint a Pulmonary Committee to be composed of at least three qualified physicians certified as B readers under standards promulgated by the International Labour Organization (ILO).

Rule [~~17.~~ 11.] Pneumoconiosis table.

A table for conversion of medically-classified categories of pneumoconiosis (under ILO standards) into stages of pneumoconiosis shall be promulgated by the commission and information from the table shall be the basis for determining the amount of compensation due, if any, under § 65.2-504 of the Code of Virginia for coal workers' pneumoconiosis and under § 65.2-503 of the Code of Virginia for other pneumoconioses.

TABLE

Medical interpretations of radiographic evidence, for the purpose of conversion to stages under this table, shall be based upon the ILO 1980 International Classification of Radiographs of the Pneumoconioses.

First Stage:	Category	1 and 2 p, s
	"	1 q, t
Second Stage:	Category	3 p, s
	"	2 and 3 q, t
	"	1, 2 and 3 r, u
Third Stage:	Category	A, B and C

Rule [~~18.~~ 12.] Hearing loss table.

A table for determining compensable percentage of hearing loss shall be promulgated by the commission.

All determinations are to be made (i) without the use of a hearing aid; and (ii) with a pure-tone audiometer by air conduction alone.

Hearing loss in decibels is to be recorded at 500, 1,000, 2,000 and 3,000 cycles per second. The audiometer shall be calibrated to the ANSI 1969 standard.

The average decibel loss is to be translated into percentage of compensable hearing loss of each ear according to the following table:

Average Decibel Loss	Percent of Compensable Hearing Loss
27	.8
28	2.2
29	3.6
30	5
31	6.7
32	8.3
33	10
34	11.7
35	13.3
36	15
37	16.7
38	18.3
39	20
40	21.7
41	23.3
42	25
43	26.7
44	28.3
45	30
46	31.7
47	33.3
48	35
49	36.7
50	38.3
51	40
52	41.7
53	43.3
54	45
55	46.7
56	48.3
57	50
58	51.7
59	53.3
60	55

61	*56.7*
62	*58.3*
63	*60*
64	*61.7*
65	*63.3*
66	*65*
67	*66.7*
68	*68.3*
69	*70*
70	*71.7*
71	*73.3*
72	*75*
73	*76.4*
74	*77.8*
75	*79.2*
76	*80.6*
77	*82*
78	*83.4*
79	*84.8*
80	*86.2*
81	*87.6*
82	*89*
83	*90.4*
84	*91.8*
85	*93.2*
86	*94.6*
87	*96*
88	*97.4*
89	*98.8*
90 and over	*100*

No allowance for presbycusis is to be made

[*Rule 13. Table of Percentage of loss of visual acuity.*

SNELLEN'S CHART

Snellen Chart Readings	*Percentage of Loss of Visual Acuity*
20/20	*0*
20/25	*5*
20/30	*10*
20/40	*20*
20/50	*25*
20/60	*33 1/2*
20/70	*40*
20/80	*50*
20/90	*62 1/2*
20/100	*75*
20/110	*80*
20/120	*85*
20/130	*87*
20/140	*89*
20/150	*91*
20/160	*93*
20/170	*95*
20/180	*97*
20/190	*99*
20/200	*100*

Any other deviation from normal vision caused by the injury shall be considered.]

VA.R. Doc. No. R94-149; Filed October 27, 1993, 9:46 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-08-1. Virginia Energy Assistance Program.**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Dates: October 26, 1993, through October 25, 1994.

Preamble:

The Virginia Energy Assistance Program was established in accordance with the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35) and the Augustus F. Hawkins Human Services Reauthorization Act of 1990 (Public Law 101-501) and amendments which authorize grants to states to meet the costs of home energy and to respond to energy-related emergencies.

The State Department of Social Services has been designated to administer the Energy Assistance Program in the Commonwealth of Virginia through 124 local departments of social services.

The Energy Assistance Program consists of three components: Fuel Assistance, Crisis Assistance and Cooling Assistance.

Passage of the Housing and Community Development Act of 1992 (Public Law 102-550) prohibiting the reduction or elimination of benefits to certain residents of federally assisted housing requires that Virginia modify its policies to ensure compliance.

The Department discovered that the language approved by the State Board of Social Services on July 17, 1986, regarding benefit amount calculations which allowed reduced benefits to households receiving federal subsidies to help meet the cost of utilities had not been registered. The Department will correct that omission by including as new language the changes needed to comply with the law.

The proposed regulatory change will delete the reduction to one-half of the benefit amount for subsidized housing households who are responsible for paying out-of-pocket all or some of their utility expenses. These households will become eligible to receive the maximum benefit they are eligible to receive.

The proposed amendment to the benefit level calculation process for the Fuel Assistance component will ensure compliance with the Housing and Community Development Act of 1992 (Public Law 102-550).

The proposed amendment to the resource level for the Fuel Assistance component will ensure compliance with House Bill 1502 amending § 63.1-110 of the Code of Virginia relating to amounts of assistance. The Energy Assistance Program is included in the program's subject to this rule.

Due to changes in the Administrative Process Act which resulted in the Department being unable to proceed with final regulatory action on the items listed which were printed as proposed actions in the Virginia Register on June 28, 1993, in Volume 9, Issue 20, pages 3554-3556, the Department sought and received State Board of Social Services permission to publish as emergency regulations.

The emergency regulation is being promulgated to ensure compliance with the federal and state mandate. The department is presently involved in litigation regarding the subsidized housing issue. Promulgation as an emergency regulation will allow programmatic changes to be implemented for the 1993-94 program year.

Emergency approval of the Governor is needed to allow the department to implement amended regulations and policy immediately. The inability to do so enhances legal vulnerability to the department.

Immediately following approval and publication of the emergency regulation in the Virginia Register of Regulations, the Department of Social Services will initiate action to develop final regulations as required by the Administrative Process Act of the Code of Virginia.

Summary:

Pursuant to § 63.1-25 of the Code of Virginia, the State Board of Social Services has been delegated the authority to promulgate rules and regulations necessary for the operation of public assistance programs in Virginia.

The Department of Social Services, in conjunction with the Attorney General's Office, is proposing to amend regulations governing the program to include the changes described above.

The amendments propose two changes to the Fuel Assistance component of the Energy Assistance Program. Households who apply 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 determination of eligibility or the calculation of benefit amounts. Eligible households receiving utility subsidies who must pay some heating expenses out-of-pocket will not have their benefit reduced.

VR 615-08-1. Virginia Energy Assistance Program.

PART I.
DEFINITIONS.

§ 1.1. *Definitions.*

The following words and terms, when used herein, shall have the following meaning unless the context indicates otherwise:

"Department" means the Department of Social Services.

"Disabled person" means a person receiving Social Security disability, Railroad Retirement Disability, 100% Veterans Administration disability, Supplemental Security Income as disabled, or an individual who has been certified as permanently and totally disabled for Medicaid purposes.

"Elderly person" means anyone who is 60 years of age or older.

"Energy-related," "weather-related," or *"supply shortage emergency"* means a household has: no heat or an imminent utility cut-off; inoperable or unsafe heating equipment; major air infiltration of housing unit; or a need for air conditioning because of medical reasons.

"Fiscal year" means October 1 through September 30.

"Household" means an individual or group of individuals who occupies a housing unit and functions as an economic unit by: purchasing residential energy in common (share heat); or, making undesignated payments for energy in the form of rent (heat is included in the rent).

"Poverty guidelines" means the Poverty Income Guidelines as established and published annually by the Department of Health and Human Services.

"Primary heating system" means the system that is currently used to heat the majority of the house.

"Program year" means the specified timeframe established for each of the program components by the department.

"Resources" means cash, checking accounts, savings account, saving certificates, stocks, bonds, money market certificates, certificates of deposit, credit unions, Christmas clubs, mutual fund shares, promissory notes, deeds of trust, individual retirement accounts, prepaid funeral expenses in excess of $900, or any other similar resource which can be liquidated in not more than 60 days.

PART II.
FUEL ASSISTANCE.

§ 2.1. The purpose of the Fuel Assistance component is to provide heating assistance to eligible households to offset the costs of home *heating* energy that are excessive in relation to household income.

A. Eligibility criteria.

1. Income limits. Maximum income limits shall be at or below 130% of the Poverty Guidelines. In order to be eligible for Fuel Assistance, a household's income must be at or below the maximum income limits.

2. Resource limits. The resource limit for a household containing an elderly or disabled person shall be $3,000. The resource limit for all other households shall be $2,000. *In addition, any individual or family applying for or receiving assistance under the fuel assistance programs may have or establish one interest-bearing savings account per assistance unit not to exceed $5,000 at a financial institution for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university or for making a down payment on a primary residence. Any funds deposited in the account, and any interest earned thereon; and any amounts withdrawn from the account for the purposes stated in this section shall be exempt from consideration in any calculation.* In order to be eligible for Fuel Assistance, a household's resources must be at or below the amount specified.

3. Alien status. Any alien who has obtained the status of an alien lawfully admitted for temporary residence is ineligible for a period of five years from the date such status was obtained. This shall not apply to a Cuban or Haitian entrant or to an alien who is an aged, blind or disabled individual.

B. Resource transfer.

Any applicant of fuel assistance shall be ineligible for that fuel season if he improperly transfers or otherwise improperly disposed of his legal or equitable interest in nonexempt liquid resources without adequate compensation within one year of application for Fuel Assistance.

Compensation that is adequate means goods, services or money that approximates the value of the resources.

This policy does not apply if any of the following occur:

1. The transfer was not done in an effort to become eligible for Fuel Assistance;

2. The resource was less than the allowable resource limit;

3. The disposition or transfer was done without the person's full understanding.

§ 2.2. Benefits.

Benefit levels shall be established based on income in relation to household size, fuel type, and geographic area, with the highest benefit given to households with the least income and the highest energy need.

Geographic areas are the six climate zones for Virginia recognized by the National Oceanic and Atmospheric Administration and the United States Department of Commerce. The six climate zones are: Northern, Tidewater, Central Mountain, Southwestern Mountain, Eastern Piedmont, and Western Piedmont.

Each year, the Division of Energy within the Department of Mines, Minerals and Energy will supply data on the average costs of various fuels.

Each year the benefit amounts for each household shall be determined by state computer using the following method:

A. The following factors for each household will be assigned a point value:

Gross monthly income

Living arrangements

Primary heat type

Climate zone

Vulnerability

Person 60 years of age or older

Disabled person in HH

Child under 16

Point values will be determined by department staff.

B. The total points of all households will be determined.

C. The available benefit dollars will be divided by the point total to determine a point *dollar* value.

D. The household's benefit amount will be calculated by multiplying the household's point total by the value per point.

§ 2.3. *Exceptions.*

All households responsible for paying all or some of their heating costs will be assigned the same point value.

Benefits will be the same for all households, except for the following:

1. Roomers occupying only one room will be entitled to a maximum benefit that is one-half of the maximum benefit that other households with the same income, household size, geographic area, and fuel type are entitled to receive.

2. Subsidized households will be entitled to the following maximum benefits depending on whether heat is included in their rent. If heat is included in their rent but they are responsible for excess fuel usage charges, their maximum benefit will be one-quarter of the benefit that other households with the same income, household size, geographic area and fuel type are entitled to receive.

§ 2.4. The application period for fuel assistance shall begin not earlier than September 1 and ~~shall~~ end not later than March 31 each year. The Board of Social Services shall set specific dates within that period for acceptance of fuel assistance applications.

PART III.
CRISIS ASSISTANCE.

§ 3.1. The purpose of the Crisis Assistance component is to assist households with energy-related, weather-related or supply shortage emergencies. This component is intended to meet energy emergencies that cannot be met by the Fuel Assistance component or other local resources.

A. Eligibility criteria.

In order to be eligible for Crisis Assistance, a household shall meet the following criteria:

1. All of the Fuel Assistance criteria as set forth in Part II, § 2.1;

2. Have an energy-related, weather-related or supply shortage emergency as defined in Part I;

3. Other resources cannot meet the emergency (including Fuel Assistance);

4. Did not receive Crisis Assistance during the current fiscal year;

5. For assistance with primary heat source, did not receive Fuel Assistance in current program year.

B. Benefits.

An eligible household can receive no more than $200 for Crisis Assistance during any federal fiscal year, unless the assistance is for the rebuilding or replacement of heating equipment or purchase of heating equipment where none exists, in which case the maximum amount of assistance shall be $700.

The following forms of assistance shall be provided:

1. Repairs, replacement or rebuilding of inoperable or unsafe heating equipment, including necessary maintenance cost of heating equipment and the purchase of supplemental equipment.

2. Payment of electricity when it is needed to operate the primary heating equipment. Payment will be limited to $200 maximum. Assistance may be provided

once every five years.

3. A one-time-only payment per fuel type of a heat-related utility security deposit.

4. Providing space heaters.

5. Providing emergency shelter.

6. Purchase 30-day supply of home heating fuel when the household is out of fuel or to prevent the disconnection of a primary utility heat source. Assistance will be provided during a specified timeframe. The Board of Social Services will establish maximum payment amounts.

§ 3.2. The application period for Crisis Assistance shall begin not earlier than September 1 and shall end not later than March 31 each year. The Board of Social Services shall set specific dates within that period for the acceptance of crisis assistance applications.

PART IV.
COOLING ASSISTANCE.

§ 4.1. Cooling Assistance is an optional component of the Energy Assistance Program that is designed to provide help to persons medically in need of cooling assistance due to the heat.

Local agencies who choose this option will be given a separate allocation that will be based on a percentage of their crisis allocation and will provide the assistance no earlier than June 15 through no later than August 31.

A. Eligibility criteria.

In order to be eligible for cooling assistance, a household must meet all of the fuel assistance eligibility criteria and must be in critical medical need of cooling.

B. Benefits.

The assistance is limited to: no more than $200 for repairing or renting a fan or air conditioner, purchasing a fan, or paying an electric bill or security deposit; or no more than $400 for purchasing an air conditioner.

PART V.
ADMINISTRATIVE COSTS.

§ 5.1. Local administrative expenditures for the implementation of the Energy Assistance Program shall not be reimbursed in excess of 7.0% of program grant allocation.

/s/ Larry D. Jackson
Commissioner
Date: October 7, 1993

/s/ Lawrence Douglas Wilder
Governor of the Commonwealth
Date: October 22, 1993

/s/ Joan W. Smith
Registrar of Regulations
Date: October 26, 1993

VA.R. Doc. No. R94-110; Filed October 26, 1993, 8:57 a.m.

.....AT RICHMOND, OCTOBER 7, 1993

APPLICATION OF
VIRGINIA BIRTH-RELATED NEUROLOGICAL
INJURY COMPENSATION PROGRAM

.....CASE NO. INS930438

For approval of amended plan of
operation pursuant to Virginia
Code § 38.2-5017

ORDER APPROVING AMENDED PLAN OF OPERATION

ON A FORMER DAY came the Virginia Birth-Related Neurological Injury Compensation Program, by its counsel, and, pursuant to Virginia Code § 38.2-5017, filed with the Clerk of the Commission an amended plan of operation. The original plan of operation was approved by the Commission by Order dated November 20, 1987, in Case No. INS870294.

THE COMMISSION, having considered the amended plan of operation, the recommendation of the Bureau of Insurance that said plan be approved, and the law applicable in this matter, is of the opinion and orders that the amended plan of operation, which is attached hereto and made a part hereof, should be, and it is hereby, APPROVED.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Janice M. Sigler, Esquire, Assistant Attorney General, Office of the Attorney General, 101 North 8th Street, Richmond, Virginia 23219; Elinor Pyles, Administrator, Virginia Birth-Related Neurological Injury Compensation Program, 700 East Main Street, Suite 1635, Richmond, Virginia 23219; and the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister.

Virginia Birth-Related Neurological Injury
Compensation Program

Plan of Operation
.....Revised July 1993

I. NAME

This program shall be known as the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 of Title 38.2, Va. Code Ann. §§ 38.2-5000 through 38.2-5021 (Michie Repl. Vol. 1990 & Supp. 1993).

II. DEFINITIONS

A. As used in this plan of operation, the following terms shall have the meanings in § 38.2-5001.

1. *"Birth-related neurological injury"* means injury to the brain or spinal cord of an infant caused by the deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate post-delivery period in a hospital which renders the infant permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. In order to constitute a "birth-related neurological injury" within the meaning of the Virginia Birth-Related Neurological Injury Compensation Act, such disability shall cause the infant to be permanently in need of assistance in all activities of daily living. This definition shall apply to live births only and shall not include disability or death caused by genetic or congenital abnormality, degenerative neurological disease, or maternal substance abuse.

2. *"Claimant"* means any person who files a claim pursuant to § 38.2-5004 for compensation for a birth-related neurological injury to an infant. Such claims may be filed by any legal representative on behalf of an injured infant; and, in the case of a deceased infant, the claim may be filed by an administrator, executor, or other legal representative.

3. *"Commission"* means the Virginia Workers' Compensation Commission.

4. *"Participating hospital"* means a hospital licensed in Virginia which at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the hospital agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation, (ii) had in force an agreement with the State Department of Health whereby the hospital agreed to submit to review of its obstetrical service, as required by subsection C of § 38.2-5004, and (iii) had paid the participating hospital assessment pursuant to § 38.2-5020 for the year in which the birth-related neurological injury occurred.

5. *"Participating physician"* means a physician licensed in Virginia to practice medicine, who practices obstetrics or performs obstetrical services either full or part time or, as authorized in the plan of operation, a licensed nurse-midwife who performs obstetrical services, either full or part time, within the scope of such licensure and who at the time of the injury (i) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the physician agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its

implementation, (ii) had in force an agreement with the Board of Medicine whereby the physician agreed to submit to review by the Board of Medicine as required by subsection B of § 38.2-5004, and (iii) had paid the participating physician assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred.

6. *"Program"* means the Virginia Birth-Related Neurological Injury Compensation Program established by the Virginia Birth-Related Neurological Injury Compensation Act.

B. As used in this plan of operation:

1. *"Act"* means the Virginia Birth-Related Neurological Injury Compensation Act.

2. *"Assessment year"* means the period from January 1 until December 31 of each year.

3. *"Board"* means the board of directors of the Program, as provided in Article IV of this plan.

4. *"Director(s)"* means member(s) of the board.

5. *"Fund"* means the Virginia Birth-Related Neurological Injury Compensation Fund, as provided in § 38.2-5015 and Article IX of this plan.

6. *"Fund manager"* means the person or entity appointed by the board pursuant to Article IX of this plan.

7. *"Plan"* means this plan of operation, as adopted by the board and approved by the State Corporation Commission.

8. *"SCC"* means the State Corporation Commission.

9. *"Servicing company"* means an entity appointed by the board pursuant to Article X of this plan to administer the processing and payment of claims against the Fund and to provide such other services related to the administration of the Program as deemed necessary or desirable by the board. The Program may, in lieu of appointing a servicing company, administer the processing and payment of claims against the Fund.

III. PURPOSE

It is the purpose of the Program to implement the Act, thereby seeking to assure the lifetime care of infants with birth-related neurological injuries, fostering an environment that will increase the availability of medical malpractice insurance at a reasonable cost for physicians and hospitals providing obstetrical services, and promoting the availability of obstetrical care to indigent and low-income patients.

IV. BOARD OF DIRECTORS ("BOARD")

A. Governance

The Program shall be governed by the board, which shall administer the plan.

B. Appointment

Directors shall be appointed by the Governor as provided in § 38.2-5016 (C).

C. Term

Directors shall be appointed for a term of three years or until their successors are appointed and qualify for office.

D. Regular Meeting

The board shall meet annually for its organizational meeting in September of each year. The board may provide, by resolution, for the time and place of additional regular meetings to be held throughout each year as the board deems necessary. Notice to directors shall not be required for any regular meeting.

E. Special Meetings

Special meetings may be called by the chairman or any two directors. The chairman shall fix the time and place of a special meeting. Notice of a special meeting may be sent by mail, telephone, telegram or fax, provided such notice is dispatched at least 72 hours prior to the special meeting. Any director present at a special meeting shall be deemed to have waived any objection to lack of notice. No statement of purpose shall be required for the calling of a special meeting.

F. Quorum

Five directors shall constitute a quorum for the transaction of any business or the exercise of any power of the Program.

G. Rules of Procedure

The board may promulgate or adopt rules of procedure governing the conduct of its regular and special meetings as it deems necessary.

H. Officers

The board shall elect annually, from among its members at its organizational meeting, a chairman and a vice chairman/secretary to serve one-year terms or until their successors are elected and assume office. The chairman and the vice chairman/secretary shall serve at the pleasure of the board.

Any vacancy in the office of chairman or vice

chairman/secretary shall be filled by election for the unexpired portion of the applicable term. The chairman shall preside at all regular and special meetings and discharge such other duties incidental to the office or as the board may require. The vice chairman/secretary shall cause to be issued all notices of regular or special meetings, cause to be recorded the minutes of such meetings, and discharge such other duties as may be incidental to the office or as the board may require.

I. Voting

Each director shall have one vote. The board shall act by majority vote. Any proposal or motion shall be carried if it receives an affirmative vote of a majority of the directors present at a duly constituted regular or special meeting. No proxy voting shall be permitted.

J. Committees

The board may establish special or standing committees as it deems necessary.

K. Powers

The board shall have the general power to administer and manage the Program and to administer and manage the Fund, which general power shall include, without limitation, the power to:

1. administer the processing and payment of claims against the Fund;

2. appoint a servicing company;

3. appoint a fund manager;

4. provide for the annual assessments of physicians, licensed nurse-midwives and hospitals wishing to participate in the Program, nonparticipating physicians and liability insurers, in accordance with the Act;

5. direct the investment and reinvestment of any surplus in the Fund over losses and expenses, provided any investment income generated remains in the Fund;

6. insure and reinsure the risks of the Fund, in whole or in part;

7. extend the deadline in § 38.2-5020 for participation in the Program for good cause shown;

8. establish and maintain physical facilities and contract as necessary for space, equipment and services;

9. provide for the keeping of, and access to, the records of the Program and the Fund;

10. provide for the audit and inspection of the financial books, papers and condition of the Program and the Fund;

11. open and maintain accounts at financial institution(s) and provide for financial, administrative and clerical services, as necessary;

12. arrange for the payment of awards made pursuant to the Act and for the payment of the expenses of administration of the Program and the Fund;

13. enforce its contractual and other rights;

14. defend the Fund and protect the Fund and the Program from fraud and deception;

15. purchase, hold and acquire real and personal property;

16. employ an executive director and other assistants as it deems necessary in the manner permitted by law;

17. appoint and authorize a person to sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts and other instruments;

18. obtain insurance against liability or damage to property as it deems necessary;

19. accept gifts, awards and donations to the Fund;

20. exercise the authority granted to it by the Act and this plan, as approved by the SCC.

21. review, consider and act on matters deemed by it to be necessary and proper for the administration of the Program; and

22. exercise such other powers as are necessary for the efficient operation of the Program.

L. Compensation

Directors shall serve without salary or other compensation. Directors shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties as directors.

M. Liability of Directors

The directors shall not be subject to any personal liability concerning the administration of the Program or the payment of any award. The Program shall indemnify the directors against personal liability and any other costs, as a cost of doing business, to the extent permitted by law.

N. Removal

Directors may be removed from office by the Governor,

as provided in § 2.1-43 (B).

O. Vacancies

Vacancies on the board shall be filled by the Governor for the unexpired portion of the current term.

V. FACILITIES

A. The offices of the Program initially shall be located in the City of Richmond, Virginia, or at such other place within the Commonwealth as the board may designate.

B. Permanent offices of the Program may be established as deemed necessary by the board.

C. The mailing address of the Program shall be 700 East Main Street, Suite 1635, Richmond, Virginia 23219.

D. The agent for service of process on the Program shall be the Attorney General of Virginia.

VI. PARTICIPATING PHYSICIANS

A. Certification of Execution of Required Agreements

As a condition imposed by law for participation in the Program, a participating physician shall certify to the Program, on a form accompanying the payment of his annual assessment, that he has executed the agreements required by § 38.2-5001, specifically:

1. an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent and, upon the approval of such a program by the Commissioner of Health, to participate in its implementation; and

2. an agreement with the Board of Medicine to submit to review by the Board of Medicine to determine whether there is reason to believe that the alleged birth-related neurological injury resulted from, or was aggravated by, substandard care on the part of the participating physician.

B. Payment of Assessment

A participating physician shall pay an annual participating physician assessment, as required by Article VIII of this plan.

C. Participation in Development and Implementation of Indigent Care Program

A participating physician shall participate in the development and implementation of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent to the extent provided for in the required agreement with the Commissioner of Health.

D. Submission to Review by Board of Medicine

A participating physician shall submit to review and evaluation by the Board of Medicine, as required by the agreement executed with the Board of Medicine, to determine whether there is reason to believe that a birth-related neurological injury alleged in a petition resulted from, or was aggravated by, substandard care on the part of the participating physician.

E. Binding Effect of Findings of the Commission

All parties are bound for all purposes, including any suit at law against a participating physician or participating hospital, by the finding of the Commission (or any appeal therefrom) with respect to whether an alleged injury is a birth-related neurological injury.

F. Exclusive Remedy

Except as provided in § 38.2-5002 (D), the rights and remedies granted by the Act and this plan to an infant on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise arising out of or related to a medical malpractice claim with respect to such injury.

A civil action arising out of or related to a birth-related neurological injury under the Act, brought by an infant, his personal representative, parents, dependents, or next of kin, shall not be foreclosed against a nonparticipating physician or hospital, provided that (i) no participating physician or hospital shall be made a party to any such action or related action, and (ii) the commencement of any such action, regardless of its outcome, shall constitute an election of remedies, to the exclusion of any claim under this Act; provided that if claim is made, accepted and benefits are provided by the Fund established under this Program, the Fund shall have the right, and be subrogated, to all of the common law rights, based on negligence or malpractice, which the said infant, his personal representative, parents, dependents or next of kin may have or may have had against the nonparticipating physician or hospital, as the case may be.

A civil action, however, shall not be foreclosed against a physician or a hospital where there is clear and convincing evidence that such physician or hospital intentionally or willfully caused or intended to cause a birth-related neurological injury, provided that such suit is filed prior to, and in lieu of payment of, an award under the Act. Such suit shall be filed before the award of the Commission becomes conclusive and binding as provided for in § 38.2-5011.

G. Participating Physician to Receive Copy of Petition

A participating physician shall receive by mail, from the Commission, a copy of any petition that names the participating physician.

H. Cooperation with Medical Evaluation Panel

A participating physician shall cooperate in the medical evaluation of claims filed with the Commission as provided in Article XI of this plan.

I. Licensed Nurse-Midwives

1. In order to ensure access to obstetrical care in areas of the Commonwealth that otherwise would not have access to such care, a licensed nurse-midwife who performs obstetrical services, either full-time or part-time, may be deemed to be a participating physician in the Program if:

a. the nurse-midwife at the time of the injury

(1) had in force an agreement with the Commissioner of Health or his designee, in a form prescribed by the Commissioner, whereby the nurse-midwife agreed to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent, and upon approval of such program by the Commissioner of Health, to participate in its implementation;

(2) had in force an agreement with the Board of Medicine whereby the nurse-midwife agreed to submit to review by the Board of Medicine as required by § 38.2-5004(B); and

(3) had paid the participating physician assessment pursuant to § 38.2-5020 for the period of time in which the birth-related neurological injury occurred.

b. an application is filed on behalf of the nurse-midwife(-ves), as required by Section I (2) of this Article.

c. the board determines that granting the application will provide the benefit of increased access to obstetrical care in areas of the Commonwealth that otherwise would not have access to such care, on a basis consistent with the sound management of risk to the Program; and the board finds such application to be in compliance with the criteria in Section I (3) of this Article.

2. Application Process

a. An application for a nurse-midwife(-ves) to be deemed a participating physician(s) in the Program must be filed by a hospital on behalf of such nurse-midwife(-ves).

b. The application must be filed at least 120 days in advance of the dates by which an annual participating physician assessment is due.

c. To assist the board, or its designee, in making a determination pursuant to Section I (3) of this Article, an application shall include, at a minimum, the following information:

(1) the name(s) of the nurse-midwife(-ves) for whom participating status is sought and copies of the current license for such nurse-midwife(-ves).

(2) a copy of the program approved by the Commissioner of Health for delivery of obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent and a summary statement of how the nurse-midwife(-ves) is an integral part of such program of indigent care delivery. In the absence of such approved program or in the event such program is outdated, the application shall include a description of the steps being taken by the hospital or the participating physicians in the geographic area served by the hospital or participating physicians to develop or amend an approved program to ensure the participation of nurse-midwife(-ves) in the delivery of indigent care.

(3) written protocols approved by the obstetrical medical staff of the hospital that describe and direct the procedures to be followed and the delegated medical services to be performed by the nurse-midwife(-ves) in the delivery of obstetrical services. Such protocols shall include a description of the supervision to be provided by the nurse-midwife(-ves) by a participating physician-obstetrician who is on the medical staff of the hospital;

(4) a certified statement by the chairman of the obstetrical department of the hospital, on behalf of the obstetrical staff, and by the hospital that:

(a) the utilization of the nurse-midwife(-ves) is needed to ensure access to obstetrical care for a significant portion of the population served by the hospital that otherwise would not have access to such care;

(b) the nurse-midwife(-ves) for whom participating physician status is sought has affiliated medical staff privileges and credentials that have been reviewed and approved by the obstetrical medical staff of the hospital and by the hospital's governing body;

(c) the delivery of obstetrical services by the nurse-midwife(-ves) will be under the supervision of an obstetrician who is on the medical staff of the hospital and who is, or will be, during the time the nurse-midwife participates in the Program, a participating physician in the Program, and, further

that such supervision will be in accordance with Regulations Governing the Certification of Nurse Practitioners approved by the Board of Nursing and Board of Medicine;

(d) contingent upon meeting the conditions of participation prescribed in the Act and this plan, the obstetricians providing supervision of the nurse-midwife(-ves) and the hospital will participate in the Program for the assessment year or any portion thereof in which the nurse-midwife(-ves) participates in the Program;

(5) any other information the hospital wishes to submit to demonstrate compliance with the criteria listed in Section I (3) of this Article.

d. The application shall be mailed to the board at the address in Article V (C) of this plan, or delivered to the primary business office of the Program.

e. The board, or its designee, shall review the application to determine its compliance with this plan. If a designee of the board determines that the application is complete, copies of the application shall be distributed to the board.

f. Within ten days following receipt of the application, any director may request that the board chairman appoint a subcommittee to review the application. In order to supply the expertise required to apply the criteria in Section I (3) of this Article, the subcommittee shall include at least one director representing participating physicians and participating hospitals. The subcommittee shall review the application to determine its consistency with the criteria detailed in Section I (3) of this Article and, based on these criteria, the subcommittee shall recommend approval or disapproval of the application. The subcommittee's recommendation to the board shall be in writing and shall set forth the basis for its recommendation.

g. At its next meeting following the review for completeness and, in the event a subcommittee is appointed, the review by the subcommittee as required by Section I (2) (f) of this Article, the board shall approve or disapprove the application. The board shall provide a written notification of its determination to the hospital filing the application and shall include in such written notification the basis for its decision.

h. The hospital may request a reconsideration of any adverse determination by providing written notice to the board within 15 days after receipt of the board's decision. The notice of request for reconsideration shall set forth in detail any changed circumstances, new evidence or other grounds for reconsideration of the board's initial decision. A request for reconsideration may be granted for good cause, in the discretion of the board.

3. Criteria for Approval of Application

a. In order to approve an application filed pursuant to Section I (2) of this Article, the board shall determine that the application is in compliance with the following criteria and that granting the application will further the objective of increasing access to obstetrical care in areas of the Commonwealth that otherwise would not have access to such care on a basis consistent with sound management of risk to the Program:

(1) that the utilization of the nurse-midwife(-ves) on whose behalf the application is made is needed to provide access to obstetrical care for a significant portion of the population served by the hospital that otherwise would not have access to such care;

(2) that the nurse-midwife(-ves) practices in accordance with written protocols that have been approved by the obstetrical medical staff of the hospital and in accordance with affiliate medical staff privileges which have been reviewed and approved by the medical staff of the hospital and by the hospital's governing body; and

(3) that the nurse-midwife(-ves) delivering obstetrical services will be supervised by an obstetrician who is on the medical staff of the hospital and who is, or will be, during the time the nurse-midwife participates in the Program, a participating physician in the Program and that such supervising obstetrician will be readily available for medical consultation with the nurse-midwife(-ves) during the course of labor, delivery and resuscitation in the immediate postdelivery period in the hospital.

b. Any application determined to be complete pursuant to Section I (2) (e) of this Article and for which no request for review has been made as authorized by Section I (2) (f) shall be deemed to be in compliance with the criteria in Section I (3) (a).

VII. PARTICIPATING HOSPITALS

A. Certification of Execution of Required Agreements

As a condition imposed by law for participation in the Program, a duly authorized representative of a participating hospital shall certify to the Program, on a form accompanying the payment of its annual assessment, that the agreements required by § 38.2-5001 have been executed on behalf of the participating hospital, specifically:

1. an agreement with the Commissioner of Health o:

his designee, in a form prescribed by the Commissioner, to participate in the development of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent and, upon the approval of such program by the Commissioner of Health, to participate in its implementation; and

2. an agreement with the Department of Health to submit to review of its obstetrical service to determine whether there is reason to believe that the alleged birth-related neurological injury resulted from, or was aggravated by, substandard care on the part of the participating hospital at which the birth occurred.

B. Payment of Assessment

A participating hospital shall pay an annual participating hospital assessment, as required by Article VIII of this plan. A participating hospital with a residency training program accredited by the American Council for Graduate Medical Education may pay an annual participating physician assessment to the Program for residency positions in the hospital's residency training program, as authorized by Article VIII of this plan.

C. Participation in Development and Implementation of Indigent Care Program

A participating hospital shall participate in the development and implementation of a program to provide obstetrical care to patients eligible for Medical Assistance Services and to patients who are indigent to the extent provided for in the required agreement with the Commissioner of Health.

D. Submission to Review by Department of Health

A participating hospital shall submit to the review and evaluation by the Department of Health as required by the agreement executed with the Department of Health to determine whether there is reason to believe that a birth-related neurological injury alleged in a petition resulted from, or was aggravated by, substandard care on the part of the participating hospital at which the birth occurred.

E. Binding Effect of Findings of the Commission

All parties are bound for all purposes, including any suit at law against a participating physician or participating hospital, by the finding of the Commission (or any appeal therefrom) with respect to whether an alleged injury is a birth-related neurological injury.

F. Exclusive Remedy

The rights and remedies granted by the Act and this plan to an infant on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise, arising out of, or related to, a medical malpractice claim with respect to such injury.

G. Participating Hospital to Receive Copy of Petition

A participating hospital shall receive by mail, from the Commission, a copy of any petition that names the participating hospital.

H. Cooperation with Medical Evaluation Panel

A participating hospital shall cooperate in the medical evaluation of claims filed with the Commission as provided in Article XI of this plan.

VIII. ASSESSMENTS

A. Method of Payment

1. Method

Assessments shall be paid according to the procedure established by the fund manager and approved by the board.

2. Effective Date of Assessment

An assessment shall be deemed to have been paid on the date full payment of the assessment is received by the fund manager.

3. Assessment Year

The assessment year shall be from January 1 until December 31 of each year.

B. Participating Physicians

1. Annual Participating Physician Assessment

a. Physicians. A physician who otherwise qualifies as a participating physician pursuant to the Act may become a participating physician in the Program for a particular assessment year by paying an annual participating physician assessment to the Program in the amount of $5,000 on or before December 1 of the previous year. See also Section C (2) of this Article.

b. Prorated Participating Physician Assessment. A physician who becomes licensed by, or commences practice in, the Commonwealth, or completes a residency training program accredited by the American Council for Graduate Medical Education, and who otherwise qualifies as a participating physician, may become a participating physician during the assessment year, provided the physician gives written notice to the Program at least thirty days prior to the requested date for participation and pays to the Program a prorated participating

assessment for the remaining portion of the year.

c. A participating physician who has paid an annual assessment for a particular assessment year to the Program and who retires from the practice of medicine during that particular assessment year shall be entitled to a refund of one-half of his or her annual assessment for the assessment year if he or she retires on or before July 1 of that year.

d. Licensed Nurse-Midwives. A licensed nurse-midwife(-ves) who otherwise qualifies as a participating physician pursuant to Article VI (I) of this plan may be deemed to be a participating physician in the Program for a particular assessment year by paying an annual participating physician assessment to the Program in the amount of $5,000 on or before December 1 of the previous year.

C. Participating Hospitals

1. Annual Participating Hospital Assessment

A hospital that otherwise qualifies as a participating hospital pursuant to the Act may become a participating hospital in the Program for a particular year by paying an annual participating hospital assessment to the Program, on or before December 1 of the previous year, amounting to $50 per live birth for the prior year, as reported to the Department of Health in the Annual Survey of Hospitals. The participating hospital assessment shall not exceed $150,000 for any participating hospital in any twelve-month period.

2. Annual Participating Physician Assessment for Residency Training Programs

A participating hospital with a residency training program accredited by the American Council for Graduate Medical Education may pay an annual participating physician assessment to the Program for residency positions in the hospital's residency training program. The participating hospital may pay an annual participating physician assessment to the Program in the amount of $5,000 on or before December 1 of the previous year, for each residency position, rather than for each resident in the participating hospital's residency training program. No resident for whom a participating physician assessment has been paid pursuant to this paragraph shall become a participating physician in the Program until thirty days following written notification by the hospital to the Program of the name of the resident filling the particular position for which the annual participating physician assessment payment has been made, together with the specific beginning and ending date that the resident will fill the position for which the assessment payment has been made.

D. Nonparticipating Physicians

1. Annual Assessments

All licensed physicians practicing in the Commonwealth on September 30 of a particular year, other than participating physicians, shall pay to the Program an annual assessment of $250 for the following assessment year.

2. Notice of Obligation

Nonparticipating physicians shall be notified of their annual assessment obligation by the fund manager or the Program.

3. Nonparticipating Physicians Exempted from Assessment Obligation

Upon proper certification to the Program, the following physicians shall be exempt from the payment of the annual $250 assessment:

a. A physician who is employed by the Commonwealth or federal government and whose income from professional fees is less than an amount equal to ten percent of the annual salary of the physician.

b. A physician who is enrolled in a full-time graduate medical education program accredited by the American Council for Graduate Medical Education.

c. A physician who has retired from active clinical practice.

d. A physician whose active clinical practice is limited to the provision of services, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in § 54.1-106.

E. Insurance Carriers

1. Insurance Carriers Subject to Assessment Obligation

All insurance carriers licensed to write, and engaged in writing, liability insurance in the Commonwealth in a particular year shall be subject to an annual assessment obligation.

2. Definition of "Liability Insurance"

For the purpose of this section of the plan, the term "liability insurance" shall include the classes of insurance defined in §§ 38.2-117 through 38.2-119 and the liability portions of the insurance defined in §§ 38.2-124, 38.2-125 and §§ 38.2-130 through 38.2-132.

3. Amount of Annual Assessment

a. Taking into account the assessments collected pursuant to § 38.2-5020 (A)-(C), if required to maintain the Fund on an actuarially sound basis, all insurance carriers licensed to write, and engaged in writing, liability insurance in the Commonwealth in a particular year shall pay into the Fund an annual assessment for the following year, in an amount determined by the SCC pursuant to § 38.2-5021 (A).

b. All annual assessments against liability insurance carriers shall be made on the basis of net direct premiums written for the business activity which forms the basis for each entity's inclusion as a funding source for the Program in the Commonwealth during the prior year ending December 31, as reported to the SCC, and shall be in the proportion that the net direct premiums written by each on account of the business activity forming the basis for their inclusion in the Program bears to the aggregate net direct premiums for all such business activity written in this Commonwealth by all such entities. For purposes of the Act and this plan, the phrase "net direct premiums written" means gross direct premiums written in this Commonwealth on all policies of liability insurance less (i) all return premiums on the policy, (ii) dividends paid or credited to policyholders, and (iii) the unused or unabsorbed portions of premium deposits on liability insurance.

c. Insurance carriers subject to the annual assessment obligation under § 38.2-5020 (E) shall not be individually liable for an annual assessment in excess of one quarter of one percent of that insurance carrier's net direct premiums written.

d. Liability insurance carriers shall be entitled to recover their initial and annual assessments through (i) a surcharge on future policies, (ii) a rate increase applicable prospectively, or (iii) a combination of the two, at the discretion of the SCC.

e. Whenever the SCC determines the Fund is actuarially sound in conjunction with actuarial investigations conducted pursuant to § 38.2-5021, it shall enter an order suspending the nonparticipating physician assessment. An annual assessment up to $250 shall be reinstated whenever the SCC determines that such assessment is required to maintain the Fund's actuarial soundness.

4. Credits Against Malpractice Insurance Premiums

a. Each insurer issuing or issuing for delivery in the Commonwealth any personal injury liability policy which provides medical malpractice liability coverage for the obstetrical practice of any participating physician shall provide a credit on such physician's annual medical malpractice liability insurance premium in an amount that will produce premiums that are neither inadequate, excessive nor unfairly discriminatory, as required by § 38.2-1904, and as determined by the SCC.

b. Each insurer issuing or issuing for delivery in the Commonwealth any personal injury liability policy which provides medical malpractice liability coverage for the obstetrical services of any participating hospital shall provide a credit on such hospital's annual medical malpractice liability insurance premium in an amount that will produce premiums that are neither inadequate, excessive nor unfairly discriminatory, as required by § 38.2-1904, and as determined by the SCC.

F. Consequences of Nonpayment of Assessment Obligation

1. Participating Physicians

No physician or licensed nurse-midwife shall be a participating physician unless the assessment currently due has been paid.

2. Participating Hospitals

No hospital shall be deemed to be a participating hospital unless the assessment currently due has been paid.

3. Nonparticipating Physicians

Nonparticipating physicians subject to an assessment obligation shall remain liable for past and current assessments until all are paid.

4. Insurance Carriers

Liability insurance carriers subject to an assessment obligation shall remain liable for past and current assessments until all are paid.

5. Delinquent Assessments - Nonparticipating Physicians and Insurance Carriers

Annual assessments for nonparticipating physicians and liability insurance carriers shall be due on or before December 1 for the following assessment year. The board may adopt procedures to compel the payment of delinquent assessments. Such procedures may include resort to judicial or administrative process or petitioning the appropriate regulatory agency of the Commonwealth to compel the payment of delinquent assessments.

6. Delinquent Assessments - Participating Physicians and Participating Hospitals

Annual assessments shall be due on or before December 1 for the following assessment year.

IX. THE BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION FUND ("FUND")

A. Source

The Fund shall be composed of all initial and annual assessments paid pursuant to the Act, all interest and income earned thereon, and all gifts, awards and donations thereto.

B. Purpose

The Fund shall be available to finance the payment of awards made pursuant to the Act and the payment of expenses associated with the administration of the Program, including the reasonable expenses of the Commission.

C. Restricted Account

The Fund shall be deposited in a restricted, interest-bearing checking account or accounts in any financial institution doing business in the Commonwealth or may be invested in interest-bearing time deposits or certificates of deposit in any financial institution doing business in the Commonwealth and whose deposits are federally insured, or treasury bills or notes of the government of the United States, or pursuant to such other investment policies as may be approved by the board.

The board shall determine what portion of the Fund shall be retained in a bank account or accounts and what portion, if any, shall be invested in the forms of investment previously listed.

D. Fund Manager

1. Appointment

The board shall appoint, subject to the provisions of the Virginia Public Procurement Act (Va. Code Ann. §§ 11-35 through 11-80), a fund manager who shall have responsibility for managing the income and expenditures of the Fund.

2. Duties

The duties of the fund manager shall include:

a. establishing and managing the account or accounts into which the assessments shall be deposited;

b. mailing assessment bills or statements, or otherwise notifying physicians, licensed nurse-midwives, hospitals and insurance carriers of their obligation to pay annual assessments;

c. depositing the assessments paid into the Fund account(s);

d. supervising the investment and reinvestment of any surplus in the Fund over losses and expenses;

e. arranging for reinsurance of risks of the Fund, in whole or in part;

f. making disbursements from the Fund as required for payment of awards pursuant to the Act and for payment of expenses for the administration of the Program;

g. presenting to the board a quarterly statement which reports the Fund's transactions, condition, operations and affairs during the prior three-month period; and

h. filing with the Commissioner of Insurance, on or before the date(s) specified by the SCC, a statement in such format as may be prescribed by the SCC, which shall report the information deemed necessary for the SCC to undertake the actuarial investigation of the Fund required by § 38.2-5021.

3. Qualifications, Standards, Terms & Compensation

The board shall provide for the establishment of qualifications, standards, terms and compensation applicable to the fund manager.

4. Identity of Fund Manager and Servicing Company

The duties of the fund manager shall not be assigned to, or performed by, the same person or firm appointed as servicing company.

E. Actuarial Investigation of the Fund

1. The Bureau of Insurance of the SCC shall make an initial actuarial valuation of the assets and liabilities of the Fund at the conclusion of the first year of operation. This valuation, along with the results of additional investigation, shall be considered by the SCC in determining the requirements of the Fund and the amount of any assessment to be paid by the entities listed in § 38.2-5020 (E) for the tax year beginning January 1, 1989.

2. In subsequent years, the SCC shall make an actuarial valuation of the Fund no less frequently than biennially. The results of such valuations shall be considered by the SCC in determining subsequent assessments applicable to entities listed in § 38.2-5020 (E). No such entity, however, shall be liable for an annual assessment in excess of one quarter of one percent of that entity's net direct premiums written.

3. If the SCC finds that the Fund cannot be maintained on an actuarially sound basis subject to the maximum assessments permitted by statute, the SCC shall promptly notify the Speaker of the House of Delegates, the President of the Virginia Senate, th

board of the Program, and the Commission.

X. ADMINISTRATION OF CLAIMS

A. Appointment of Servicing Company

The board may appoint, subject to the provisions of the Virginia Public Procurement Act, a servicing company, which shall administer the processing of claims against the Fund, or the Program may, on its own, administer the processing of claims against the Fund.

B. Duties of Servicing Company

The duties of the servicing company shall include:

1. promptly notifying legal counsel to the Program of the date and place set for hearing upon each claim;

2. investigating the facts alleged in each petition and verifying records produced to make recommendations to the board whether a claimant is eligible for an award pursuant to the Act;

3. verifying the amount of expenses claimed in conjunction with each award providing compensation, including whether the items listed in § 38.2-5009 (1) (a)-(d) apply to the amount claimed;

4. directing the fund manager to disburse award payments;

5. providing clerical and administrative services necessary for the processing of claims made against the Fund, and such other clerical and administrative duties as may be directed by the chairman of the board; and

6. presenting to the board an annual report concerning the operation of the claims processing procedure.

C. Qualifications, Standards, Terms & Compensation

The board shall provide for the establishment of qualifications, standards, terms and compensation applicable to the servicing company, if a servicing company is appointed.

D. Identity of Fund Manager and Servicing Company

The duties of the servicing company shall not be assigned to, or performed by, the same person or firm appointed as fund manager.

XI. CLAIMS PROCEDURE

A. Filing of Claims

1. For each claim made pursuant to the Act, the claimant shall file with the Commission a petition setting forth the following information:

a. The name and address of the legal representative and the basis for his or her representation of the injured infant;

b. The name and address of the injured infant;

c. The name and address of any physician or licensed nurse-midwife providing obstetrical services who was present at the birth and the name and address of the hospital at which the birth occurred;

d. A description of the disability for which claim is made;

e. The time and place where the birth-related neurological injury occurred;

f. A brief statement of the facts and circumstances surrounding the birth-related neurological injury giving rise to the claim;

g. All available relevant medical records relating to the person who allegedly suffered a birth-related neurological injury and an identification of any unavailable records known to the claimant and the reasons for their unavailability;

h. Appropriate statements, evaluations, prognoses and such other records and documents reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the injured infant due to a birth-related neurological injury;

i. Documentation of expenses and services incurred to date, which indicates whether such expenses and services have been for, and if so, by whom; and

j. Documentation of any applicable private or governmental source of services or reimbursement concerning, or resulting from, the birth-related neurological injury.

2. The claimant shall furnish the Commission with a filing fee of fifteen dollars and as many copies of the petition as required for service upon the Program, all physicians, licensed nurse-midwives and hospitals named, the Board of Medicine and the Department of Health.

3. Upon receipt of a petition, the Commission shall immediately serve a copy upon the agent designated in Article V by registered or certified mail, and shall mail copies of the petition to all physicians, licensed nurse-midwives and hospitals named in the petition, the Board of Medicine and the Department of Health.

B. Administrative Evaluations

1. Upon receipt of a petition, the Board of Medicine shall evaluate the claim. If it determines that there is

reason to believe that the alleged injury resulted from, or was aggravated by, substandard care on the part of a physician, it shall take appropriate action consistent with the authority granted to it in §§ 54.1-2911 through 54.1-2928.

2. Upon receipt of a petition, the Department of Health shall evaluate the claim. If it determines that there is reason to believe that the alleged birth-related neurological injury resulted from, or was aggravated by, substandard care on the part of a hospital, it shall take appropriate action consistent with the authority granted to it under Title 32.1.

C. Response of the Program

Within thirty days of the date of service of the petition, the Program shall file with the Commission a response which shall present relevant written information relating to whether the injury alleged is a "birth-related neurological injury," as defined in the Act and this plan. The claimant or Program may amend its petition or response at any time prior to the hearing pursuant to § 38.2-5006, and after the filing of the report of the medical evaluation panel in § 38.2-5008 (B).

D. Hearing Scheduled

1. Immediately after the petition is received, the Commission shall set a date for a hearing, which shall be no sooner than 45 days and no later than 120 days after the petition is filed.

2. The Commission shall notify the parties, i.e., the claimant and the Program, of the time and place of the hearing.

3. The hearing shall be held in the city or county where the alleged injury occurred, or in a contiguous city or county unless otherwise agreed to by the parties and authorized by the Commission.

E. Prehearing Proceedings

1. Any party to a proceeding may, upon application to the Commission setting forth the materiality of the evidence sought, serve interrogatories and cause the depositions of witnesses to be taken.

2. The costs associated with such discovery may be recovered by a claimant as expenses incurred in connection with the filing of a claim pursuant to § 38.2-5009 (4).

3. Depositions shall be taken only after giving notice in the manner prescribed for depositions in actions at law, except that such notice shall be directed to the Commission, Commissioner or Deputy Commissioner before whom the proceeding may be pending.

F. Determination of Claims

1. The hearing shall be conducted pursuant to the Commission's rules of practice and procedure, unless otherwise required by the Act.

2. The Commission shall determine, based on evidence presented to it, the following:

a. Whether the injuries claimed are birth-related neurological injuries as defined in § 38.2-5001. A rebuttable presumption shall arise that the injury alleged is a birth-related neurological injury where it has been demonstrated, to the satisfaction of the Commission, that the infant has sustained a brain or spinal cord injury caused by oxygen deprivation or mechanical injury, and that the infant was thereby rendered permanently motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled. If either party disagrees with such presumption, that party shall have the burden of proving that the injuries alleged are not birth-related neurological injuries within the meaning of the Act.

b. Whether obstetrical services were delivered by a participating physician at the birth.

c. Whether the birth occurred in a participating hospital.

d. How much compensation, if any, should be awarded pursuant to § 38.2-5008 and this plan.

3. The report of the medical evaluation panel, filed pursuant to § 38.2-5006, shall be considered by the Commission. At the request of the Commission, one member of the panel shall be available to testify at the hearing. The Commission, however, shall not be bound by the panel's recommendations.

4. If the Commission determines (i) that the injury alleged is not a birth-related neurological injury as defined in § 38.2-5001, or (ii) that obstetrical services were not delivered by a participating physician at the birth and that the birth did not occur in a participating hospital, it shall dismiss the petition and cause a copy of its order of dismissal to be sent immediately to the parties by registered or certified mail.

5. Upon determining (i) that an infant has sustained a birth-related neurological injury, and (ii) that obstetrical services were delivered by a participating physician at the birth or that the birth occurred in a participating hospital, the Commission shall make an award providing compensation for the following items concerning the injury:

a. Actual medically necessary and reasonable expenses of medical and hospital, rehabilitative residential and custodial care and service, specia.

equipment or facilities, and related travel, such expenses to be paid as they are incurred. However, such expenses shall not include:

(1) Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state or the federal government except to the extent prohibited by federal law;

(2) Expenses for items or services that the infant has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity;

(3) Expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or federal government except to the extent prohibited by federal law; and

(4) Expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, pursuant to the provisions of any health or sickness insurance policy or other private insurance program.

b. Expenses of medical and hospital services under paragraph (a), above, shall be limited to such charges as prevail in the same community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person.

c. Loss of earnings from the age of eighteen are to be paid in regular installments beginning on the eighteenth birthday of the infant. An infant found to have sustained a birth-related neurological injury shall be conclusively presumed to have been able to earn income from work from the age of eighteen through the age of sixty-five, if he had not been injured, in the amount of fifty percent of the average weekly wage in the Commonwealth of workers in the private, nonfarm sector.

d. Reasonable expenses incurred in connection with the filing of a claim under the Act and this plan, including reasonable attorneys' fees, which shall be subject to the approval and award of the Commission.

6. A copy of the award shall be sent immediately by registered or certified mail to the parties.

G. Review of Commission Determination or Award

1. If a hearing held pursuant to this Article was not held before the full Commission, a party may apply for the review of any determination of award made. Such application shall be made to the Commission within twenty days from the date of such determination or award and, if such application for review is made, the full Commission, excluding any member who made the determination or award, shall review the evidence.

2. If deemed advisable, the full Commission may instead conduct a rehearing and issue an affirming or amended determination or award, as deemed appropriate.

3. Upon such review or rehearing, a statement of the findings of fact, conclusions of law and other matters pertinent to the questions at issue shall be filed with the record of the proceeding and shall be sent immediately to the parties.

H. Appeal

1. The determination of the Commission concerning the eligibility of a claimant for compensation or with regard to the amount of any such award, if not reviewed within the time prescribed by § 38.2-5010, or upon such review as provided in this Article, shall be conclusive and binding as to all questions of fact. No appeal may be taken from the decision of one commissioner until a review has been had before the full Commission.

2. Appeals shall lie from the full Commission to the Court of Appeals in the manner provided in the Rules of the Supreme Court.

3. A notice of appeal shall be filed with the clerk of the Commission within thirty days of the date of such determination or award or within thirty days after receipt by registered or certified mail of notice of such determination or award, whichever occurs last. A copy of the notice of appeal shall be filed with the clerk of the Court of Appeals, as provided in the Rules of the Supreme Court.

4. Cases appealed shall be placed upon the privileged docket of the Court and be heard at the next ensuing term. In case of an appeal from an award of the Commission to the Court of Appeals, the appeal shall operate as a suspension of the award, and the Program shall not be required to make payment of the award involved in the appeal until the questions at issue shall have been fully determined.

XII. SETTLEMENT ORDERS

A. Settlement Orders Authorized

At any time after the report of the medical evaluation panel has been filed with the Commission concerning a claim against the Fund, the board may enter into an agreed order with the claimant and the claimant's attorney, if any, to be presented to the Commission for approval.

B. Execution of Settlement Order

An agreed order shall be executed by the claimant, the claimant's attorney, if any, and the duly authorized representative of the Program.

C. Commission Approval

The Program, the claimant and the attorney for the claimant, if any, shall jointly petition the Commission to review any agreed order. An agreed order shall be effective only upon the approval of the Commission.

D. Force and Effect of Approved Orders

An agreed order approved by the Commission shall have the same force and effect as a Commission determination made pursuant to §§ 38.2-5008 (A) and 38.2-5009.

XIII. MEDICAL EVALUATION OF CLAIMS

A. Review of Medical Evaluation Panel

Each claim filed with the Commission shall be reviewed by a panel of three qualified and impartial physicians according to the plan developed by the deans of the medical schools of the Commonwealth, as required by § 38.2-5008 (B).

B. Cooperation of Claimants, Participating Physicians and Participating Hospitals

Claimants, participating physicians and participating hospitals shall cooperate with the medical evaluation panel in its evaluation of claims. This cooperation shall include, but not be limited to:

1. Access to a claimant's medical records; and

2. The physical examination of the claimant by a panel member or members.

C. Panel Report

A panel shall file its report and recommendations whether the injury alleged is a birth-related neurological injury, as defined in § 38.2-5001, with the Commission at least ten days prior to the date set for a hearing pursuant to § 38.2-5006 and Article XI of this plan.

D. Availability of Report

The report of a panel shall be mailed or delivered to the Program, the claimant and any participating physician and participating hospital named in the petition.

XIV. LEGAL SERVICES

Legal services for the Program shall be provided by the Office of the Attorney General of Virginia.

XV. AMENDMENT TO THE PLAN

Amendments to this plan may be made by the board subject to the approval of the SCC.

XVI. EFFECTIVE DATE AND DURATION

This plan shall be effective upon its adoption by the board and its approval by the SCC. The plan shall continue in force and effect until rescinded by the board or abrogated by the General Assembly.

XVII. CONFLICT WITH STATE LAW

If any provision of state law is found to be in conflict with the provisions of this plan, the statute shall control.

VA.R. Doc. No. R94-106; Filed October 21, 1993, 3:34 p.m.

FINAL REGULATION

.....AT RICHMOND, OCTOBER 12, 1993

..... CASE NO. MCO930426

IN THE MATTER OF
SINGLE STATE INSURANCE
REGISTRATION PROGRAM

ORDER ADOPTING RULES AND REGULATIONS

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, that by Administrative Order entered herein on the 29th day of July 1993, this Commission set forth its intent to adopt the Rules and Regulations set forth in exhibit A attached hereto, and to that end caused to be published a copy of said order and Rules and Regulations. The Order also allowed for public comments, objections, or requests for hearing to be filed prior to the 28th day of September 1993. None were filed;

IT FURTHER APPEARING, to this Commission that the attached Rules and Regulations are to replace those regulations adopted by Order of this Commission on June 1, 1971, and revised on February 14, 1978; accordingly,

IT IS ORDERED:

(1) That the Commission adopts, effective immediately, the Rules and Regulations set forth in Exhibit A attached hereto; and

(2) That those regulations adopted by the Order of this Commission dated June 1, 1971 and revised by order dated February 14, 1978 be revoked, effective January 1, 1994.

.....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 section 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 other 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 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 three 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 three 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. R94-105; Filed October 21, 1993, 3:32 p.m.

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER TWENTY-SIX (93)

"PICK 4 GREEN BALL PROMOTION," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Pick 4 Green Ball Promotion" game rules for the Virginia Lottery Pick 4 promotional program to be conducted from Monday, September 20, 1993 through Saturday, October 16, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until October 31, 1993, unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: August 31, 1993.

VA.R. Doc. No. R94-135; Filed October 27, 1993, 9:03 a.m.

DIRECTOR'S ORDER NUMBER THIRTY (93)

VIRGINIA'S THIRTY-EIGHTH INSTANT GAME LOTTERY; "WINNING HANDS," FINAL RULES FOR GAME OPERATION.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the final rules for game operation in Virginia's thirty-eighth instant game lottery, "Winning Hands." These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of instant game lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
October 18, 1993

VA.R. Doc. No. R94-136; Filed October 27, 1993, 9:03 a.m.

DIRECTOR'S ORDER NUMBER THIRTY-ONE (93)

"WINNING HANDS"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Winning Hands" promotional game and drawing rules for the Instant Game 38 kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Thursday, October 28, 1993. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unti October 31, 1993, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: October 25, 1993

VA.R. Doc. No. R94-137; Filed October 27, 1993, 9:03 a.m.

DIRECTOR'S ORDER NUMBER THIRTY-TWO (93)

"THE BIG DEAL," VIRGINIA LOTTERY RETAILER PROMOTIONAL PROGRAM RULES.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate "The Big Deal," Virginia Lottery Retailer Promotional Program Rules for the lottery retailer cashing incentive program which will be conducted from Monday, November 15, 1993 through Sunday, January 9, 1994. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: October 25, 1993

VA.R. Doc. No. R94-138; Filed October 27, 1993, 9:04 a.m.

PROPOSED REGULATIONS

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

Title of Regulation: **VR 447-01-1. Guidelines for Public Participation in Regulation Development and Promulgation.**

Statutory Authority: §§ 9-6.14:7.1 and 58.1-4007 of the Code of Virginia.

Public Hearing Date: January 24, 1994 - 10 a.m.
Written Comments may be submitted through January 21, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 58.1-4007 of the Code of Virginia grants to the State Lottery Board the power to adopt regulations governing the establishment and operation of a lottery.

Purpose: The proposed regulatory changes comply with statutory changes by establishing procedures for soliciting input of interested parties in the formation and development of regulations and sets forth the general policy of the department not to utilize ad hoc advisory panels. The proposed regulations promulgate emergency regulations that were made effective June 29, 1993.

Substance: The proposed amendments:

1. Provide for the identification of interested parties in the formation and development of regulations in § 3; and

2. Set forth the general policy of the department not to utilize ad hoc advisory panels in § 5. This section further states that the department (i) will evaluate, within two years of the promulgation of a regulation, the effectiveness of the regulation, and (ii) may suspend, should it receive requests from more than 25 persons, the regulatory process for 30 days to solicit additional input on the proposed regulation.

Issues: Revisions are promulgated to conform to the Administrative Process Act.

Impact: The estimated impact of the proposed amendments to the general public is negligible.

Summary:

The proposed amendments (i) provide for the identification of interested parties in the formation and development of regulations in § 3; and (ii) set forth the general policy of the department not to utilize ad hoc advisory panels in § 5. This section further states that the department will evaluate, within two years of the promulgation of a regulation, the effectiveness of the regulation; and may suspend, should it receive requests from more than 25 persons, the regulatory process for 30 days to solicit additional input on the proposed regulation.

VR 447-01-1. Guidelines for Public Participation.

§ 1. Generally.

A. In developing any regulation, the State Lottery Board ("board") and the State Lottery Department ("department") are committed to obtaining comments from interested people.

B. Anyone who is interested in participating in the process of developing regulations should notify the department in writing. This notification should be sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

1. The department will maintain a list of the people who notified the department in writing.

2. The department will mail to everyone on the list a copy of the Notice of Intended Regulatory Action discussed in § 4 of these guidelines.

§ 2. Identification of needed regulations.

A. Anyone may identify the need for a new regulation or for an amendment, or addition to, or a repeal of any existing regulation. The request for a new regulation or suggested change to a current regulation should be made in writing and sent to: Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220.

B. The department and board, at their discretion, may consider any regulatory request or change.

§ 3. Identification of interested parties.

Before the department develops a regulation, it will identify persons who would be either interested in or affected by the proposal. The methods for identifying interested parties ~~shall~~ *may* include, but not be limited to, the following:

1. Obtaining the statewide listing of business, professional and civic associations published by the Virginia State Chamber of Commerce. This list will be

used to identify groups which might be interested in the regulation.

2. Using department files to identify people who have raised questions or expressed an interest in the regulations.

3. Using a list, compiled by the department, of persons who previously participated in public proceedings.

4. Obtaining annually from the Secretary of the Commonwealth a list of all persons, associations and others who have registered as lobbyists for the General Assembly session. This list will be used to identify groups which may be interested in the subject matter of the proposed regulation.

§ 4. Notification of interested parties.

A. Generally.

The department will prepare a Notice of Intended Regulatory Action ("Notice") before developing any regulation. The notice will identify the subject matter and purpose of the new regulation(s). The notice will specify a time deadline and location for interested persons to submit written comments.

B. Notifying those interested.

The methods for notifying interested persons ~~will~~ *may* include, but not be limited to, the following:

1. Sending the notice to all persons identified as interested parties through the methods described in § 3 ~~above~~ ; *and*

2. Publishing the notice in the Virginia Register of Regulations (Virginia Register) ; ~~and~~ .

~~3. Requesting that groups, associations, and organizations to whom the notice is sent publish the notice in newsletters or journals or use other means available to them to inform their members.~~

Failure of these persons and organizations to receive the documents for any reason shall not affect the validity of any regulation otherwise properly adopted under the Administrative Process Act.

§ 5. Public participation in regulation development.

A. Initial comment.

After interested parties have responded to the notice, the department will determine the level of interest.

1. ~~If sufficient~~ *It is the general policy of the department not to utilize standing or ad hoc advisory panels; however, if the Governor or more than 25 persons express* interest ~~exists~~ *in the proposed regulation* , the department may schedule *consultation in the form of* informal meetings before the development of the regulation. The meetings will determine the specific areas of interest and concern and will gather factual information on the subject of the regulation.

2. Instead of informal meetings, the department may ask for additional written comments, concerns or suggestions on the development of the regulation from those who responded to the notice.

3. The department may decide that the notice resulted in receipt of enough information so that it can develop the regulation without an informal meeting or additional written comments.

B. Preparing a working draft.

After the initial public input on the intended regulatory action, the department will develop a working draft of the proposed regulation for the board to review, revise and approve, after consultation with the director.

C. Within two years of the promulgation of a regulation, the department shall evaluate it for effectiveness and continued need. The department may conduct an informal proceeding which may take the form of a public hearing to receive public comment on existing regulations. 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. Submission of regulation under the Administrative Process Act.

1. After the drafting process ends, the board-approved regulation will be submitted to the Registrar of Regulations under the Administrative Process Act (APA), ~~Title 9,~~ Chapter 1.1:1 ; *(§ 9-6.14:1 et seq.) of Title 9* of the Code of Virginia. The board-approved regulation will be published as a proposed regulation in the Virginia Register.

2. The department will furnish a copy of the regulation published in The Virginia Register to persons who make such a request. A copy of the "Notice of Comment Period" form may be sent with the copy of the regulation.

3. If the department elects to hold a public hearing, the time, date, and place will be specified. In addition, the cutoff date for people to notify the department that they will participate in the public hearing will be set out. People who choose to participate in the public hearing ~~will~~ *may* be asked to submit, in advance, written copies of their comments. These copies will help to ensure that comments are accurately recorded in the formal transcript of the hearing.

4. When the board issues an order adopting a regulation, the department may elect to send a notice to people who participated in the APA comment process. The notice will state that the regulation will be published in The Virginia Register and will specify the issue number.

5. If the department receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the department 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. Department denial of petitions for a comment period on changes to the regulations shall be subject to judicial review.

§ 7. Publication and distribution of final regulation.

1. The board will adopt all final regulations after consultation with the director. The final regulations will be submitted for publication in The Virginia Register.

2. The board will order the department to print all adopted final regulations and make appropriate distribution.

3. The distribution of any regulation will be made with a goal of increasing public knowledge of the policies of the department and compliance with the department's regulations.

VA.R. Doc. No. R94-140; Filed October 27, 1993, 9:06 a.m.

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Title of Regulation: **VR 447-01-2. Administration Regulations.**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: January 24, 1994 - 10 a.m.
Written comments may be submitted until January 21, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 58.1-4007 of the Code of Virginia grants to the State Lottery Board the power to adopt regulations governing the establishment and operation of a lottery.

Purpose: The proposed regulatory changes incorporate numerous housekeeping, technical and substantive changes throughout the Administration Regulations, including appeal procedures for placement of an instant ticket vending machine or a self-service terminal, procurement procedures for the purchase of goods and services exempt from competitive procurement, and contract change order procedures.

Substance: The proposed amendments:

1. Add definitions for certain terms used in the regulations;

2. Provide in § 3.5 appeal procedures for placement of an instant ticket vending machine or a self-service terminal;

3. Conform to state procurement guidelines in § 4.2 by raising the amount of purchase of goods exempt from competitive procurement from $1,000 to $2,000 and purchase amount of services from $1,000 to $5,000; and

4. Provide in § 4.21 that, pursuant to state procurement guidelines, contract change orders require the signature of the director. Additionally, no contract shall be modified for an amount to exceed $10,000 or 25%, individually or cumulatively, of the original contract without prior approval of the director.

Also, there are numerous housekeeping and technical changes made throughout these regulations.

Issues: Revisions are promulgated to conform to the Administrative Process Act and state procurement guidelines and to provide additional appeal procedures for lottery retailers.

Impact: The estimated impact of the proposed amendments to the general public is negligible. The addition of the appeal procedures is expected to be received positively by lottery retailers.

Summary:

The proposed amendments: (i) add definitions for certain terms used in the regulations; (ii) provide in § 3.5 appeal procedures for placement of an instant ticket vending machine or a self-service terminal; (iii) conform to state procurement guidelines in § 4.2 by raising the amount of purchase of goods exempt from competitive procurement from $1,000 to $2,000 and purchase amount of services from $1,000 to $5,000; and (iv) provide in § 4.21 that, pursuant to state procurement guidelines, contract change orders require the signature of the director. Additionally, no contract shall be modified for an amount to exceed $10,000 or 25%, individually or cumulatively, of the original contract without prior approval of the director. Also, there are numerous housekeeping and technical changes made throughout these regulations.

VR 447-01-2. Administrative Regulations.

PART I.
GENERAL PARAMETERS.

§ 1.1. Definitions.

The words and terms, when used in any of the department's regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means a request presented by a retailer, vendor or individual for an informal or formal hearing contesting the director's decision to refuse to issue or renew, suspend or revoke a lottery license for the appellant or award a contract to another vendor.

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means and includes any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America whose principal place of business is within the Commonwealth of Virginia and which is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit and handling of lottery funds, the accounting of those funds and the safekeeping of records.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids.

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the state lottery law.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request For ~~Proposal~~ *Proposals* . Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request For ~~Proposal~~ *Proposals* , is accepted.

"Conference" or "consultation" means the informational or factual inquiries of an informal nature provided in § 9-6.14:11 of the Administrative Process Act.

"Conference officer" or "hearing officer" means the director or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation or conclusion in a case decision matter.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means an agreement, enforceable by law, between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services.

"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.

"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.

"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.

"Department" means the State Lottery Department created by the state lottery law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or state agency, which performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers,

2. The handling of lottery funds,

3. The deposit of lottery funds, or

4. The accounting for lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money against a bank account.

"Goods" means any material, equipment, supplies, printing, and automated data processing hardware and software.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature.

"Household" means members of a group who live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes.

"Informalities" means defects or variations of a bid

from the exact requirements of the Invitation for ~~Bid~~ *Bids* which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.

"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

"Instant ticket vending machine" or "ITVM" means a remote machine allowing players to purchase lottery instant game tickets.

"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"Letter contract" means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.

"Lottery" or *"state lottery"* means the lottery or lotteries established and operated in response to the provisions of the state lottery law.

"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

"Noncompetitive negotiations" means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.

"Nonprofessional services" means personal services not defined as "professional services."

"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.

"Notice of Intent to Award" means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

"Performance bond" means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

"Person" means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

"Personal interest," "personal interest in a contract," or "personal interest in a transaction" means financial benefit or liability accruing to an officer or employee or to a member of his immediate family in any matter considered by the department.

"Personal services contract" means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.

"Procurement" means the procedures for obtaining goods or services. It includes all activities from the planning steps and preparation and processing of a request through the processing of a final invoice for payment.

"Professional services" means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.

"Protest" means a complaint about an administrative action or decision brought by a vendor to the department with the intention of receiving a remedial result.

"Purchase order" (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:

1. To award a contract resulting from an Invitation For Bids (IFB).

2. To establish a blanket purchase agreement.

3. As a delivery order to place orders under state contracts or other requirements-type contracts which were established for such purpose.

"Request for Information (RFI)" means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

"Request for Proposals (RFP)" means a document used to solicit offers from vendors for buying goods or services. It permits negotiation with vendors (to include prices) as

compared to competitive bidding used in the invitation for bids.

"Responsible vendor" means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;

2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;

3. Have a satisfactory record of performance; and

4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

"Responsive vendor" means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation and, any discount or adjustment allowed for the retailer's payment of prizes of less than $601.

"Self-service terminal" or "SST" means a remote electromechanical machine allowing players to purchase tickets for on-line lottery games available through clerk-activated terminals.

"Services" means any work performed by a vendor where the work is primarily labor or duties and is other than providing equipment, materials, supplies or printing.

"Sole source" means that only one source is practicably available to furnish a product or service.

"Solicitation" means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Vendor" means one who can sell to, supply or install goods or services for the department.

§ 1.2. Generally.

The purpose of the state lottery is to produce revenue consistent with the integrity of the Commonwealth and the general welfare of its people. The operations of the State Lottery Board and the State Lottery Department will be conducted efficiently, honestly and economically.

§ 1.3. State Lottery Board.

A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. It may also request information from the public. The board may have additional meetings as needed. (See Part III, Board Procedures.)

B. Inspection of department records.

At the board's request, the department shall produce for review and inspection the department's books, records, files and other information and documents.

§ 1.4. Director.

The director shall administer the operations of the State Lottery Department following the authority of the Code of Virginia and these regulations.

§ 1.5. Ineligible players of the lottery.

Board members, officers or employees of the lottery, or any board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer, employee, or any person under ~~the age of~~ 18 years *of age* may not purchase tickets or receive prizes of the lottery.

§ 1.6. Advertising.

A. Generally.

Advertising may include but is not limited to print advertisements, radio and television advertisements, billboards, point of purchase and point of sale display materials. The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.

B. Lottery retailer advertising.

Any lottery retailer may use his own advertising materials if the department has approved its use in writing before it is shown to the public. The department shall develop written guidelines for giving such approval.

C. Information provided by department.

The department may provide information displays or other material to the retailer. The retailer shall position the material so it can be seen easily by the general public.

D. Special advertising.

The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

E. Winner advertising.

The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery.

F. Other advertising.

The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.

§ 1.7. Operations of the department.

A. Generally.

The department shall be operated in a manner which considers the needs of the Commonwealth, lottery retailers, the public, the convenience of the ticket purchasers, and winners of lottery prizes.

B. Employment.

The department shall hire people without regard to race, sex, color, national origin, religion, age, handicap, or political affiliation.

1. All employees shall be recruited and selected in a manner consistent with the policies which apply to classified positions.

2. Sales and marketing employees are exempt from the Virginia Personnel Act.

C. Internal operations.

The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.

2. Internal operations apply to automated and manual systems.

D. External operations.

The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

E. Apportionment of lottery revenue.

Moneys received from lottery sales will be divided approximately as follows:

50% Prizes

45% State Lottery Fund Account (On and after July 1, 1989, administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)

5.0% Lottery retailer ~~discounts~~ *compensation*

F. State Lottery Fund Account.

The State Lottery Fund will be established as an account in the Commonwealth's accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Funding will be from gross sales.

1. Within the State Lottery Fund, there shall be a "Lottery Prize Special Reserve Fund" subaccount created in the State Lottery Fund account which will be used when lottery prize ~~pay-outs~~ *payouts* exceed department cash on hand. ~~Immediately prior to initial lottery sales, $500,000 shall be transferred to the Lottery Prize Special Reserve Fund from start-up treasury loan funds in the State Lottery Fund. Thereafter, 5.0%~~ *Five percent* of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or $5 million dollars, whichever is less.

a. The calculation of the 5.0% will be made for each instant or on-line game.

b. The funding of this subaccount may be adjusted at any time by the board.

2. Reserved.

3. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director with concurrence of the State Comptroller and the Auditor of Public Accounts.

4. In accordance with the Appropriation ~~Acts of Assembly~~ *Act* , the State Comptroller provides an interest-free line of credit not to exceed $25,000,000 to the department. This line of credit is in lieu of the Operations Special Reserve Fund required to be established by the Comptroller in accordance with § 58.1-4022 B of the Code of Virginia. Draw-downs against this line of credit are available immediately upon request of the department.

G. Administrative and operations costs.

Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees, advertising costs, salaries, rents, utilities, and telecommunications costs.

H. Audit of lottery revenues.

The cost of any audit shall be paid from the State Lottery Fund.

1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.

2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.

I. Other matters.

The board and director may address other matters not mentioned in these regulations which are needed or desired for the efficient and economical operation and administration of the lottery.

PART II.
BANKS AND DEPOSITORIES.

§ 2.1. Approval of banks.

The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

A. A bank or banks shall serve as agents for electronic funds transfers between the department and lottery retailers as required by these regulations and by contracts between the department, the State Treasury, retailers, and the banks.

B. In selecting the bank or banks to provide these services, the State Treasurer and the director shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.

C. There shall be no limit on the number of banks approved under this section.

§ 2.2. Approval of depositories.

The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers. Additionally, the director may contract for other financial services to process subscriptions and other deposit applications.

§ 2.3. Compensation.

A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.

B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.

C. Depositories will be compensated based on vouchers for services rendered.

§ 2.4. Depository for transfer of tickets.

A. The department may designate one or more depositories to transfer lottery tickets, lottery materials, and related documents between the department and lottery retailers.

B. Reserved.

C. In determining whether to use depositories for transferring tickets, materials and documents between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services.

PART III.
LOTTERY BOARD PROCEDURES.

Article 1.
Board Procedures for the Conduct of Business.

§ 3.1. Officers of the board.

A. Chairman and ~~vice-chairman~~ *vice chairman* .

The board shall have a chairman and a ~~vice-chairman~~ *vice chairman* who shall be elected by the board members.

B. Term of officers.

The board will elect its officers annually at its January meeting to serve for the calendar year.

§ 3.2. Board meetings.

A. Monthly meetings.

The board will hold monthly public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information from the public.

B. Special meetings.

The board may hold additional meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. Notice of special meetings shall be given to all board members at least two calendar days before the meeting. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

C. Quorum.

Three or more board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.

D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.

§ 3.3. Committees of the board.

A. Ad hoc committees.

The board chairman may at his discretion appoint such ad hoc committees as he deems necessary to assist the board in its work.

B. Purpose of committees.

An ad hoc committee may be established to advise the board on a matter referred to it or to act on a matter on behalf of the board if so designated.

1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.

a. Three members shall constitute a quorum.

b. Official action of such a committee shall require not fewer than three affirmative votes with each member including the chairman having one vote.

c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.

2. A committee established to act in an advisory capacity to the board may include members of the general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

c. All actions of advisory committees shall be presented to the board in the form of recommendations.

Article 2.
Procedures for Appeals on Licensing Actions.

§ 3.4. ~~Hearings~~ *Conferences* on denial, suspension or revocation of a retailer's license.

A. Generally.

An instant lottery retailer applicant or an instant lottery retailer surveyed for an on-line license who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked *or any retailer that believes it is eligible for placement of an instant ticket vending (ITVM) or self-service terminal (SST) based on criteria established by the department but which has not been surveyed* may appeal the licensing decision and request a ~~hearing~~ *conference* on the licensing action.

B. ~~Hearings~~ *Conferences* to conform to Administrative Process Act provisions.

The conduct of license appeal ~~hearings~~ *conferences* will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 of the Code of Virginia relating

to Case Decisions.

1. An initial ~~hearing~~ *conference* consisting of an informal fact finding process will be conducted by the director *or the appointed conference officer* in private to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to Court Review.

§ 3.5. Procedure for appealing a licensing decision.

A. Form for appeal.

Upon receiving a notice that (i) an application for an instant game license, or the survey of an instant retailer for licensing as an on-line retailer, or the renewal of a license, has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, *or (iii) any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department,* the applicant or licensed retailer may appeal in writing for a ~~hearing~~ *conference* on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensed retailer.

2. The appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in § 3.5 A.

B. Where to file appeal.

An appeal to be mailed shall be addressed to:

State Lottery Director
State Lottery Department
Post Office Box 4689
Richmond, Virginia 23220

An appeal to be hand delivered shall be delivered to:

State Lottery Director
State Lottery Department
Bookbindery Building
2201 West Broad Street
Richmond, Virginia 23220

1. An appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by § 3.5 A.

2. Delivery to State Lottery Department regional offices or to lottery sales personnel by hand or by mail is not effective.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. Content of appeal.

The appeal shall state:

1. The decision of the director which is being appealed;

2. The basis for the appeal;

3. The retailer's license number or the Retailer License Application Control Number; and

4. Any additional information the appellant may wish to include concerning the appeal.

§ 3.6. Procedures for conducting informal fact finding licensing ~~hearings~~ *conferences* .

A. ~~Director~~ *Conference officer* to conduct informal ~~hearing~~ *conference* .

The ~~director~~ *conference officer* will conduct an informal fact finding ~~hearing~~ *conference* with the appellant for the purpose of resolving the licensing action at issue.

B. ~~Hearing~~ *Conference* date and notice.

The ~~director~~ *conference officer* will hold the ~~hearing~~ *conference* as soon as possible but not later than 30 days after the appeal is filed. A notice setting out the ~~hearing~~ *conference* date, time and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the ~~hearing~~ *conference* .

C. Place of ~~hearings~~ *conferences* .

All informal ~~hearings~~ *conferences* shall be held in Richmond, Virginia, unless the ~~director~~ *conference officer* decides otherwise.

D. Conduct of ~~hearings~~ *conferences* .

The ~~hearings~~ *conferences* shall be informal. They sha

not be open to the public.

1. The ~~hearings~~ *conferences* will be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information subject to the ~~director's~~ *conference officer's* prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

6. The ~~director~~ *conference officer* may exclude information at any time which he believes is not germane or which repeats information already received.

7. The ~~director~~ *conference officer* shall declare the ~~hearing~~ *conference* completed when both parties have finished presenting their information.

E. ~~Director~~ *Conference officer* to issue written decision.

Normally, the ~~director~~ *conference officer* shall issue his decision within 15 days after the conclusion of an informal ~~hearing~~ *conference* . However, for a ~~hearing~~ *conference* with a court reporter, the ~~director~~ *conference officer* shall issue his decision within 15 days after receipt of the transcript of the ~~hearing~~ *conference* . The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. Appeal to board for hearing.

After receiving the ~~director's~~ *conference officer's* decision on the informal ~~hearing~~ *conference* , the appellant may elect to appeal to the board for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the ~~director's~~ *conference officer's* decision on the informal ~~hearing~~ *conference* ;

2. Mailed to:

Chairman, State Lottery Board
State Lottery Department
Post Office Box 4689
Richmond, Virginia 23220

OR

Hand delivered to:

Chairman, State Lottery Board
State Lottery Department
Bookbindery Building
2201 West Broad Street
Richmond, Virginia 23220

3. The same procedures in § 3.5 B for filing the original notice of appeal govern the filing of the notice of appeal of the ~~director's~~ *conference officer's* decision to the board.

4. The appeal shall state:

a. The decision of the ~~director~~ *conference officer* which is being appealed;

b. The basis for the appeal;

c. The retailer's license number or the Retailer License Application Control Number; and

d. Any additional information the appellant may wish to include concerning the appeal.

§ 3.7. Procedures for conducting formal licensing hearings.

A. Board to conduct formal hearing.

The board will conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

B. Number of board members hearing appeal.

Three or more members of the board are sufficient to hear an appeal. If the chairman of the board is not present, the members present shall choose one from among them to preside over the hearing.

C. Board chairman may designate an ad hoc committee to hear appeals.

The board chairman at his discretion may designate an ad hoc committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.

D. Conflict of interest.

If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.

E. Notice, time and place of hearing.

A notice setting the hearing date, time and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.

F. Conduct of hearings.

The hearings shall be conducted in accordance with the provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

1. The hearings will be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The provisions of §§ 9-6.14:12 through 9-1.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

G. Board's decision.

Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained in the department and become a part of the case file.

2. The written decision will contain:

a. A statement of the facts to be called "Findings of Facts";

b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and

c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

H. Court review.

After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the Administrative Process Act.

Article 3.
Procedures for Promulgating Regulations.

§ 3.8. Board procedures for promulgating regulations.

The board shall promulgate regulations, in consultation with the director, in accordance with the provisions of the Administrative Process Act (Chapter 1.1:1 of Title 9 of the Code of Virginia).

1. The board will provide for a public participation process to be set out in "Guidelines for Public Participation in Regulation Development and Promulgation."

2. Public hearings may be held if the subject matter of a proposed regulation and the level of interest generated through the public participation process warrant them.

PART IV.
PROCUREMENT.

§ 4.1. Procurement in general.

A. To promote the free enterprise system in Virginia, the State Lottery Department will purchase goods or services by using competitive methods whenever possible. In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.

B. Reserved.

C. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, when in the best interest of the State Lottery Department.

D. When time permits, the department may publish notice of procurement actions in "Virginia Business Opportunities," published by the Department of General Services, Division of Purchases and Supply.

§ 4.2. Exemption and restrictions.

A. Purchase of goods ~~and services~~ of ~~$1,000~~ *$2,000* or less shall be exempted from competitive procurement procedures. *Purchase of services of $5,000 or less shall be exempted from competitive procurement procedures.* Specific purchases of goods ~~and services~~ of more than ~~$1,000~~ *$2,000 and services of more than $5,000* may be exempted from the competitive procurement procedures when the director determines in writing that the best

interests of the department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.

B. All purchases shall be made in compliance with the standards of ethics in § 4.23 of these regulations.

C. The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.

D. It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.

E. Whenever a purchase is exempt from competitive procurement procedures under these regulations, *except purchases of $2,000 or less,* the contracting officer is obliged to make a *written* determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions.

§ 4.3. Requests for information.

A. A Request for Information (RFI) may be used by the department to determine available sources for goods or services.

B. The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.

C. The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.

1. Additional RFI's may be published for a good or a service, as determined on a case-by-case basis.

2. To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.

D. All costs of developing and presenting the information furnished will be paid for by the vendor.

E. The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.

F. The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract.

§ 4.4. ~~Request~~ *Requests* for Proposals.

A. A written Request for ~~Proposal~~ *Proposals* (RFP) may be used by the department to describe in general terms the goods or services to be purchased. An RFP may result in a negotiated contract.

B. The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.

C. The department shall publish or post a public notice of the RFP.

1. All solicitations shall be posted for not less than five working days on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.

2. The department shall decide the method of giving public notice on a case-by-case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.

D. Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.

E. The department will evaluate each vendor proposal.

1. The evaluation will consider the vendor's response to the factors in the RFP.

2. The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.

F. The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.

G. Award of RFP Contract.

1. The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.

2. Price will be considered but is not necessarily the determining factor.

3. The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon.

§ 4.5. Invitations for Bids.

A. A written Invitation for ~~Bid~~ *Bids* (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.

B. The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.

1. The IFB may contain inspection, testing, quality, and other terms essential to the contract.

2. It may contain other optional data.

C. Public notice of the IFB shall be given.

1. The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted for not less than five working days at the department's central office in a public area used to post purchase notices, and shall be given to any other interested vendor.

2. The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.

D. Receiving IFB's.

1. Bids shall be received until the date and time set forth in the IFB.

2. Late bids shall not be considered.

E. Opening IFB's.

The IFB may provide that bids shall be publicly opened. If bids are publicly opened, the following items shall be read aloud:

1. Name of bidder;

2. Unit or lot price, as applicable; and

3. Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.

F. Evaluating IFB's.

The department shall evaluate each vendor bid.

1. The evaluation shall consider whether the bid responds to the factors in the IFB.

2. All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.

3. The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.

G. Award of IFB contract.

The department shall award the contract to the lowest responsive and responsible bidder.

§ 4.6. Sole source procurements.

A. A sole source procurement shall be made when there is only one source practicably available for goods or services. Because there is only one source practicably available, a sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.

B. For a sole source procurement of more than ~~$1,000~~ *$2,000* but not more than $15,000, the department will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods or services procured, the date of the procurement and factors leading to the determination of sole source.

C. For a sole source procurement greater than $15,000, on the day the director awards the procurement, he will post for not less than five working days a written statement in a public area used to post purchase notices at the department's central office. The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors leading to the determination of sole source, and the date of the procurement.

§ 4.7. Emergency purchase procurement.

A. An emergency purchase procurement shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be

obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.

B. For an emergency purchase of more than ~~$1,000~~ *$2,000* but not more than $15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

C. For an emergency purchase greater than $15,000, on the day the director awards the procurement, a written statement shall be posted for not less than five working days in a public area used to post purchase notices at the department's central office. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

§ 4.8. Procedures for small purchases.

A. Generally.

Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed $15,000.

B. Price quotations.

Price quotations may be obtained through oral quotations in person or by telephone without the use of an RFI, RFP or IFB.

C. Written confirmation.

If the contract is $2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over $2,000.

D. Except in the case of an emergency under § 4.7 or for purchases of ~~$1,000~~ *$2,000* or less, the department will attempt to obtain at least three quotations.

E. In letting small purchase contracts, the department may consider factors in addition to price.

§ 4.9. Procurement of nonprofessional services.

A. Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.

B. Nonprofessional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than $5,000. When there is more that one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualifed expert or source practicably available for the services to be procured.

§ 4.10. Procurement of professional services.

A. Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services should be made on the basis of qualifications, resources, experience and the cost involved.

B. Professional services may be procured through noncompetitive negotiations under the following conditions:

1. Where the estimated one-time cost is less than $5,000. When there is more than one qualified source for a specific type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2. When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.

C. Professional services procurement by competitive negotiation shall be in accordance with § 4.11.

§ 4.11. Guidelines for competitive procurement of professional services.

A. In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs and methods to be utilized in arriving at a price for the services.

B. At the request of an offeror, properly marked, proprietary information shall not be disclosed to the public or to competitors.

C. At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are

deemed to meet best the department's procurement needs.

D. Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.

E. If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under consideration, a purchase may be negotiated and awarded to that offeror.

F. The department must ensure that all points negotiated are properly documented and become a part of the procurement file.

G. The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.

H. A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures.

§ 4.12. Time to submit and accept RFI's, RFP's or IFB's.

A. All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.

1. All vendors shall take responsibility for their chosen method of delivery to the department.

2. The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.

3. Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.

4. All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.

B. Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services.

§ 4.13. Questions on bids.

Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made.

§ 4.14. How to modify or withdraw proposals or bids.

A. A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.

B. A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.

1. A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.

2. A proposal or bid may be withdrawn after opening if the department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.

C. A vendor may not modify a proposal or bid after the purchase award is made.

§ 4.15. Rejection of bids.

The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department.

§ 4.16. Testing of product.

Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing.

§ 4.17. Proposal bid or performance security.

A. The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.

1. When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.

2. When required, security will not be waived, except upon action by the director.

B. Security provided by vendors to whom a contract is

awarded will be kept by the department until all provisions of the contract have been completed.

§ 4.18. Assignment of contracts.

A vendor may not assign any contract to another party without permission of the director.

§ 4.19. Strikes, lockouts or acts of God.

Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor.

§ 4.20. Remedies for the department on goods and services which do not meet the contract.

A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.

B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law.

§ 4.21. Administration of contracts.

A. Generally.

The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.

B. Records.

The department shall keep all records relating to a contract for three years after the end of a contract.

1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.

2. Records shall be open to the public except for proprietary information for which protection has been properly requested.

C. Change orders.

1. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.

2. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.

3. Modifications ~~which increase the original contract price by an amount less than $5,000 may be made by letters~~ *shall require the signature of the director or the signature of the designee granted authority to sign for the amount amended, except a contract may be modified for payment purposes by an amount not to exceed 10% of the total contract without a written change order or amendment. In no event shall a contract be modified for an amount of $10,000 or 25%, whichever is greater, individually or cumulatively without approval and signature of the director. Modifications shall be effected by issuance of a letter in the form of a change order or amendment to the original agreement* issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract. ~~In no event shall the cumulative amount of the contract increased by all such letters exceed $10,000.~~

~~4. All contract changes of $5,000 or more require a formal written amendment to the contract.~~ *Reserved* .

D. Cancellation orders.

The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in § 4.20 A and B.

E. Overshipments and overruns.

The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.

F. Inspection, acceptance and rejection of goods or services.

1. The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.

2. In rejecting goods or services, the department will notify the vendor as soon as possible.

3. The department will state the reasons for rejecting the goods or services and request prompt replacement.

4. Replacement goods or services shall be made available at a date acceptable to the department.

G. Complaints.

The department will report complaints in writing to the

vendor as they occur. The reports will be part of the department's purchase records.

H. Invoice processing.

To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Title 11, Chapter 7, Article 2.1 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.

I. Default actions.

Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.

J. Termination for convenience of the department.

1. A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

2. If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.

3. If the purchase order or contact is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.

4. Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia.

§ 4.22. Vendor background.

A. A vendor shall allow the department to check his background. The background check may extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of 5.0% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.

B. Before contracting with the department, the department may require a vendor to sign an agreement with the department to allow a criminal investigation of the entities and persons named in § 4.22 A.

C. The vendor shall allow the department to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business during normal business hours.

§ 4.23. Ethics in contracting.

A. Generally.

Except for more stringent requirements set forth in this section, the department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Title 11, Chapter 7, Article 4 of the Code of Virginia.

B. Employee role with vendors prohibited.

A department employee who has responsibility to buy from vendors may not:

1. Be employed by a vendor at the same time;

2. Have a business associate or a member of his household be an officer, director, trustee, partner or hold a similar position with a vendor or play a role in soliciting contracts for vendors;

3. Himself or his business associate or a member of his household own or control an interest in a vendor of at least 5.0%;

4. Himself or his business associate or a member of his household have a personal interest in a contract procured for the department; or

5. Himself or his business associate or a member of

his household negotiate or have an arrangement about prospective employment with a vendor.

C. Offers, requests, or acceptance of gifts.

No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.

D. Kickbacks.

No vendor will demand or receive from any of his suppliers or subcontractors, as an incentive for a contract, any kickback.

E. Vendors to give certified statement on ethics in contracting.

Each vendor shall give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.

F. Department employees to give notice of subsequent employment with vendors.

Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year of terminating his employment with the department shall give notice to the director of his intention prior to his first day of employment with the vendor.

G. Any contract which violates the contracting ethics in the Code of Virginia and these regulations may be voided and rescinded immediately by the department.

§ 4.24. Preference for Virginia products and firms.

A. In the case of a tie bid or proposal, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

B. Whenever any bidder or offeror is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or offeror who is a resident of Virginia.

PART V.
PROCUREMENT APPEALS AND DISPUTES.

§ 5.1. Generally.

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures. In lieu thereof, this regulation applies to all vendors. In the event of a protest on a procurement action, the vendor shall follow the remedies available in this regulation. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.

§ 5.2. Appeals, protests, time frames and remedies related to solicitation and award of contracts.

A. If a vendor is considered ineligible or disqualified.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

B. If a vendor is not allowed to withdraw a bid in certain circumstances.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

a. The certified check shall be payable to the State Lottery Department.

b. The cash bond shall name the State Lottery Department as obligor.

c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. If a vendor is considered not responsible for certain contracts.

1. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular

contract. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

D. If a vendor protests an award or decision.

1. Any vendor or potential vendor may protest the award or the department's decision to award a contract. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a ~~10 day~~ *10-day* time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

§ 5.3. Appeals, time frames and remedies related to contract disputes and claims.

A. Generally.

In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Contract claims.

Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

3. Nothing in this regulation shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.

4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

5. The director's decision will state the reasons for the action.

C. Claims relief.

Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

§ 5.4. Form and content of appeal to the director.

A. Form for appeal.

The vendor shall make the appeal to the director in writing. The appeal shall be mailed to the State Lottery Director, State Lottery Department, P.O. Box 4689, Richmond, Virginia 23220 or hand delivered to the department's central office at the Bookbindery Building, 2201 West Broad Street, Richmond, Virginia 23220.

B. Content of appeal.

The appeal shall state the:

1. Decision of the department which is being

appealed;

2. Basis for the appeal;

3. Contract number;

4. Other information which identifies the contract; and

5. Reasons for the action.

C. Vendor notification.

The director's decision on an appeal will be sent to the vendor by certified mail, return receipt requested.

1. The director shall follow the time limits in the regulations and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.

2. The director's decision will state the reasons for the action.

§ 5.5. State Lottery Department appeal hearing procedures.

A. Generally.

The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.

2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.

3. Legal counsel may represent the vendor or the department. Counsel is not required.

4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.

5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.

6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

B. Public hearings for appeals.

1. Hearings shall be open to the public. The director may adjourn the public hearing to discuss and reach his decision in private.

2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.

3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

C. Order during the hearing.

Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.

2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

4. After all evidence has been presented, the director shall reach his decision in private.

§ 5.6. Notice, time and place of hearings.

A. Notice and setting the time.

All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

B. Place of hearings.

All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

§ 5.7. Who may take part in the appeal hearing.

A. Generally.

The director may request specific people to take part in the hearing.

B. Hearings on ineligibility, disqualification, responsibility

or denial of a request to withdraw a bid.

The protesting vendor and the department shall participate.

C. Hearings on claims or disputes.

The protesting vendor and the department shall participate.

§ 5.8. Director's decision.

A. Generally.

The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.

B. Hearings with court reporter.

For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.

C. Format of decision.

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."

2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.

3. The decision will be signed by the director.

D. Copies of the decision.

Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

§ 5.9. Appeal to courts.

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.

B. Nothing in these regulations shall prevent the director from taking legal action against a vendor.

Notice: The forms used in administering the State Lottery Department Administration Regulations are not being published, however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Register of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Informal Conference Request (Rev. 7/93)
Formal Hearing Request
State Lottery Department Agency Purchase Order

VA.R. Doc. No. R94-139; Filed October 27, 1993, 9:13 a.m.

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Title of Regulation: **VR 447-02-1. Instant Game Regulations.**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: January 24, 1994 - 10 a.m.
Written Comments may be submitted until January 21, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 58.1-4007 of the Code of Virginia grants to the State Lottery Board the power to adopt regulations governing the establishment and operation of a lottery.

Purpose: The proposed regulatory changes incorporate numerous housekeeping, technical and substantive changes throughout the Instant Game Regulations, including lottery retailer conduct, license standards, validation requirements, and payment of prizes.

Substance: The proposed amendments:

1. Authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 1.11;

2. Exclude family-oriented businesses from those determined to be frequented predominantly by persons under 18 years of age as provided in § 1.11;

3. Add a provision to § 2.4 stating that a cash prize or free ticket purchased by an individual or individuals ineligible to play a lottery game shall revert to the State Lottery Fund; and

4. Stipulate in § 3.20 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets.

Additionally, there are numerous housekeeping and technical changes made throughout these regulations.

Issues: Revisions are promulgated to conform to statutory provisions and lottery licensing and ticket validation requirements.

Impact: The estimated impact of the proposed amendements on the general public is negligible. The additional licensing standards will ensure integrity of lottery retailers.

Summary:

The proposed amendments (i) authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 1.11; (ii) exclude family-oriented businesses from those determined to be frequented predominantly by persons under 18 years of age as provided in § 1.11; (iii) add a provision to § 2.4 stating that a cash prize or free ticket purchased by an individual or individuals ineligible to play a lottery game shall revert to the State Lottery Fund; and (iv) stipulate in § 3.20 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets. Additionally, the proposed amendments incorporate numerous housekeeping and technical changes throughout these regulations.

VR 447-02-1. Instant Game Regulations.

PART I.
LICENSING OF RETAILERS FOR INSTANT GAMES.

§ 1.1. Definitions; licensing.

The words and terms, when used in any of the department's regulations, shall have the same meaning as defined in these regulations, unless the context clearly indicates otherwise.

A. Definitions for instant games.

"Altered ticket" means a lottery ticket which has been forged, counterfeited or altered.

"Bearer instrument" means a lottery ticket which has not been signed by or on behalf of a person or a legal entity. Any prize won on an unsigned ticket is payable to the holder, or bearer, of that ticket.

"Book" or "ticket book" means the same thing as "pack."

"Damaged ticket" means a lottery ticket pulled from distribution by the department due to poor quality, e.g., bent, torn or defaced, thereby rendering it unfit to play.

"Erroneous ticket" means a lottery ticket which contains an unintentional manufacturing or printing defect. A player holding such a lottery ticket is entitled to a replacement ticket of equal value.

"Game" means any individual or particular type of lottery authorized by the board.

"Instant game" means a game that uses preprinted tickets with a latex covering over a portion of the ticket. The covering is scratched off by the player to reveal immediately whether the player has won a prize or entry into a prize drawing. An instant game may include other types of non-on-line lottery games.

"Instant ticket" means an instant game ticket with a latex covering the game symbols located in the play area. Each ticket has a unique validation number and ticket number.

"License approval notice" means the form sent to the retailer by the lottery department notifying him that his application for a license has been approved and giving him instructions for obtaining the required surety bond and setting up his lottery bank account.

"Lottery retailer" or *"lottery sales retailer"* or *"retailer"* means a person licensed by the director to sell and dispense lottery tickets, materials or lottery games for instant lottery games or for both instant and on-line lottery games.

"Low-tier winner" or *"low-tier winning ticket"* means an instant game ticket which carries a cash prize of $25 or less or a prize of additional unplayed instant tickets.

"Manufactured omitted tickets" means those tickets pulled from distribution due to poor quality by the manufacturer prior to distribution to the department.

"Omitted tickets" means those tickets pulled from distribution by the department for testing purposes and quality assurance.

"Pack" generally means a set quantity of individually wrapped unbroken, consecutively numbered, fanfolded instant game tickets which all bear an identical book or pack number which is unique to that book or pack among all the tickets printed for a particular game.

"Player" means a person who is a lottery customer who has purchased or intends to purchase any lottery ticket or tickets for a specific lottery game or drawing, or an agent or representative of such person. Licensed lottery retailers and their employees may be a lottery customer; however, they may not act as agents or representatives of a player.

"Prize" means any cash or noncash award to holders of winning instant or on-line tickets.

"Retailer," as used in these instant game regulations, means a licensed instant lottery retailer, unless the context clearly requires otherwise.

"Ticket" or *"tickets" means a lottery instant game preprinted ticket which is identifiable to a particular game or drawing.*

"Ticket number" means the preprinted unique number

or combination of letters and numbers which identifies that particular ticket as one within a particular game or drawing.

"Validation" means the process of determining whether a lottery ticket is a winning ticket.

"Validation number" means the unique number or number-and-letter code printed on the front of an instant ticket sometimes under a latex covering bearing the words "Do not remove," "Void if removed" or similarly worded label, or the unique number assigned by the on-line central computer and printed on the front of each on-line ticket.

B. Licensing of retailers for instant games.

The director may license as lottery retailers for instant games persons who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

§ 1.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may submit an application for licensure, except no person may submit an application for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;

2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as a board member, officer or employee of the department; or

3. Who is a vendor of lottery tickets or material or data processing services, or whose business is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

B. Application not an entitlement to license.

The submission of an application for licensure does not in any way entitle any person to receive a license to act as a lottery retailer.

§ 1.3. Application procedure.

~~Filing of forms with the department.~~

Any eligible person shall first file an application with the department on forms supplied for that purpose, along with the required fees as specified elsewhere in these regulations. The applicant shall complete all information on the application forms in order to be considered for licensing. The forms to be submitted include:

1. Retailer License Application;

2. Personal Data Form(s); and

3. Retailer Location Form.

State Lottery Law makes falsification, concealment or misrepresentation of a material fact, or making a false, fictitious or fraudulent statement or representation in an application for a license a misdemeanor.

§ 1.4. General standards for licensing.

A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and security of the applicant, to include:

a. A credit and criminal background investigation;

b. Outstanding delinquent state tax liability;

c. Required business licenses, tax and business permits; and

d. Physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to the public, to include:

a. The hours of operation;

b. The availability of parking and transit routes, where applicable;

c. The location in relation to major employers, schools, or retail centers;

d. The population level and rate of growth in the market area; and

e. The traffic density, including levels of congestion in the market area.

3. The sufficiency of existing lottery retailers to serve

the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected sales volume and profitability of lotentially competing lottery retailers; and

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of business;

c. Sales history of business and market area; and

d. Volume of customer traffic in place of business.

5. The ability to offer high levels of customer service to instant lottery players, to include:

a. Ability to display point of sale material;

b. A favorable image consistent with lottery standards;

c. Ability to pay prizes during maximum selling hours; and

d. Commitment to authorize employee participation in all required instant lottery training.

B. Additional factors for selection.

The director may develop and, by administrative order, publish additional criteria which, in his judgment, are necessary to serve the public interest and public trust in the lottery.

§ 1.5. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond from a surety company entitled to do business in Virginia. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of $5,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and

2. Submit the surety company's letter or certificate with the required annual license fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next annual license review action.

§ 1.6. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the Automatic Clearing House (ACH) system.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed or due from the purchase of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for

maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "License Approval Notice," the lottery retailer shall return the properly executed "Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department to record establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

§ 1.7. License term and annual review.

A. License term.

A general license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board.

B. Annual license review. The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Reserved.

D. Amended license term.

The annual fee for an amended license issued under the requirements of § 1.9 C will be due on the same date as the fee for the license it replaced.

E. Special license.

The director may issue special licenses to persons for specific events and activities. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. Instant game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

F. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

§ 1.8. License fees.

A. License application fee.

The fee for a license application for a lottery retailer general license to sell instant game tickets shall be $25 , *unless otherwise determined by the board* . The general license fee to sell instant game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

B. License fee.

The annual fee for a lottery retailer general license to sell instant game tickets shall be an amount fixed by the board at its November meeting for all annual license reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is reviewed. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a retailer's anniversary date.

C. Amended license application fee.

The fee for processing an amended license application for a lottery retailer general license shall be an amount as approved by the board at its November meeting for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license application shall be submitted in cases where a business change occurs as specified in § 1.9 B.

§ 1.9. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid for any of the following reasons:

1. Change in business location;

2. Change in business structure (e.g., from a partnership to a sole proprietorship); or

3. Change in the business owners listed in the original application form for which submission of a Personal Data Form is required under the license application procedure.

C. Amended application required.

A licensed lottery retailer who anticipates a change as listed in subsection B shall notify the department of the anticipated change at least ~~15~~ *30* calendar days before it takes place and submit an amended application. The director shall review the changed factors in the same manner that would be required for a review of an original application.

§ 1.10. Display of license.

~~License displayed in general view.~~

Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 1.11. Denial, suspension, revocation or noncontinuation of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;

2. The person has been convicted of a crime involving moral turpitude;

3. The person has been convicted of any fraud or misrepresentation in any connection;

4. The person has been convicted of bookmaking or other forms of illegal gambling;

5. The person has been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;

~~5.~~ *6.* The person's place of business caters to or is frequented predominantly by persons under 18 years of age *but excluding family-oriented businesses* ;

~~6.~~ *7.* The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

~~7.~~ *8.* The nature of the person's business is not consonant with the probity of the Commonwealth; ~~or~~

~~8.~~ *9.* The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery ~~.~~ *; or*

10. The person has been suspended permanently from a federal or state program and that person has exhausted all administrative actions pursuant to the respective agency's regulations.

B. Grounds for refusal to license partnership or corporation.

The director may refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation does not meet the eligibility criteria and standards for licensing as set out in these regulations or if any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by § 3.4 of VR 447-01-2.

~~C.~~ *D.* Grounds for suspension, revocation or refusal to continue license.

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for lottery tickets received, for prizes claimed and paid or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms and conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules and regulations of the department;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public

convenience is adequately served by other retailers;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing application process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards;

11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age , *excluding family-oriented businesses* ;

12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; ~~or~~

13. The nature of the person's business is not consonant with the probity of the Commonwealth ~~.~~ *; or*

14. Permanent revocation or suspension from any federal or state program whereby all administrative procedures pursuant to the respective agency's regulations were exhausted.

~~D.~~ *E.* Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection ~~C~~ *D* , the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

~~E.~~ *F.* Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

~~F.~~ *G.* Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final lottery accounting of his lottery activities by the date specified by the director.

§ 1.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

§ 1.13. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any retailer's lottery material that has not been approved for use by the department.

§ 1.14. Inspection of premises.

~~Access to premises by department.~~

Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

§ 1.15. Examination of records; seizure of records.

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

§ 1.16. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an

independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

§ 1.17. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering tickets; (ii) paying for tickets purchased; (iii) reporting receipts, transactions and disbursements pertaining to lottery ticket sales; and (iv) settling the retailer's account with the department.

§ 1.18. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

A. Forms of payment for tickets; deposit of lottery receipts.

Each lottery retailer shall purchase the tickets distributed to him. The moneys for payment of these tickets shall be deposited to the credit of the State Lottery Fund by the department. The retailer shall make payments to the department by Electronic Funds Transfers (EFT); however, the director reserves the right to specify one or more of the following alternative forms of payment under such conditions as he deems appropriate:

1. Cash;

2. Cashier's check;

3. Certified check;

4. Money order; or

5. Business check.

B. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the purchasing and payment of tickets and the settlement of accounts.

C. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be assessed an interest charge on the moneys due plus a $25 penalty. The interest charge will be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

D. Service charge for dishonored EFT transfer or bad check.

The director will assess a service charge of $25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

E. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt that are incurred by the department and the agencies to which the debt is referred.

F. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

§ 1.19. Training of retailers and their employees.

Each retailer or his designated representative or representatives is required to participate in training given by the department in the operation of each game. The director may consider nonparticipation as grounds for suspending or revoking the retailer's license.

§ 1.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 15 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART II.
INSTANT GAMES.

§ 2.1. Development of instant games.

The director shall select, operate, and contract for the operation of instant games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each instant game after consultation with the director. These details include, but are not limited to:

1. Prize amounts and prize structure,

2. Types of noncash prizes, if any, and

3. The amount and type of any jackpot or grand prize which may be awarded.

The actual number of prizes and prize stucture may vary from that adopted by the board because of the omission of defective tickets in the manufacturing process, an increase or decrease in the number of tickets ordered, or the removal of tickets from inventory to perform the department's quality control inspection procedures.

§ 2.2. Prize structure.

~~The~~ *Unless otherwise determined by the board, the* prize structure for any instant game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each instant game shall be approved in advance by the board.

B. Prizes may be cash or noncash awards, including instant game tickets.

§ 2.3. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. Lottery retailers may not discount the sale price of instant game tickets or offer free tickets as a promotion with the sale of instant tickets. This section shall not prevent a retailer from providing free instant tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery.

B. This section shall not apply to the redemption of a winning instant ticket the prize for which is another free ticket.

§ 2.4. Sales, gift of tickets to minors prohibited.

An instant game ticket shall not be sold to, purchased by, redeemed from or given as a gift to any individual under 18 years old. No prize shall be paid on a ticket purchased by or transferred to any person under 18 years ~~old~~ *of age* . The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.*

§ 2.5. Chances of winning.

The director shall publicize the overall chances of winning a prize in each instant game. The chances may be printed on the ticket or contained in informational materials, or both.

§ 2.6. End of game.

Each instant game will end on a date announced in advance by the director. The director may suspend or terminate an instant game without advance notice if he finds that this action will serve and protect the public interest.

§ 2.7. Sale of tickets from expired games prohibited.

No instant game tickets shall be sold after that game ends.

§ 2.8. Licensed retailers' compensation.

A. ~~Licensed~~ *Unless otherwise determined by the board, licensed* retailers shall receive 5.0% compensation on all instant game tickets purchased from the department for resale by the retailer.

B. The director may award cash bonuses or other incentives to retailers. The board shall approve any bonus or incentive system. The director will publicize any such system by administrative order.

C. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of source.

§ 2.9. Price for ticket packs.

For each pack, retailers shall pay the retail value, less the 5.0% retailer compensation and less the value of the low-tier winning tickets in the pack. For example, for a pack of tickets with a retail value of $300, and guaranteed low end prize structure of $154, the retailer would pay $131: $300 (the pack value) minus $154 for low-tier winners, less the retailer's $15 compensation.

§ 2.10. Purchase of instant tickets.

A. Retailers shall purchase packs of tickets directly from the department or through designated depositories.

B. Retailers shall pay for tickets via an electronic funds transfer (EFT) initiated by the department.

1. The department will initiate the EFT after tickets are delivered to the retailer. The schedule will be determined by the director.

2. If an electronic funds transfer is refused, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations. The service charge, interest and penalty charges may be waived under § 1.18 F of these regulations.

3. The director may approve another form of payment for designated retailers under conditions to be determined by the director.

4. If the director permits payment by check and if payment on any check is denied, the retailer shall be assessed service charge, interest and penalty charges as provided for in these regulations.

C. Once tickets are accepted by a retailer, the department will not replace mutilated or damaged tickets, unless specifically authorized by the director.

D. Ticket sales to retailers are final.

1. The department will not accept returned tickets except as provided for elsewhere in these regulations or with the director's advance approval.

2. The retailer is responsible for lost, stolen or destroyed tickets unless otherwise approved by the director.

§ 2.11. Retailers' conduct.

A. Retailers shall sell instant tickets at the price fixed by regulation, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies or with the department's specific approval.

D. Tickets shall be sold during all normal business hours unless the director approves otherwise.

E. Tickets shall be sold only at the location listed on each retailer's license from the department.

F. Retailers shall not sell instant tickets after the announced end of an instant game.

G. Retailers shall not break apart ticket packs to sell instant tickets except to sell tickets from the same pack at separate selling stations within the same business establishment.

H. Retailers shall not exchange ticket packs or tickets with one another or sell ticket packs or tickets to one another.

I. On the back of each instant ticket sold by a retailer, the retailer shall print or stamp the retailer's name, address and retailer number. This shall be done in a manner that does not conceal any of the preprinted material.

J. No retailer or his employee or agent shall try to determine the numbers or symbols appearing under the removable latex coverings or otherwise attempt to identify unsold winning tickets. However, this shall not prevent the removal of the covering over the validation code or validation number after the ticket is sold and a prize is claimed.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age may sell or vend lottery tickets so long as they are supervised by a person 18 years of age or older.

§ 2.12. Returns of unsold tickets.

A. Each retailer may return for credit full, unbroken ticket packs to the department at any time before the announced end of the game and before the return of any partial packs.

B. After the twelfth week of any instant game, each retailer may return broken partial packs of tickets to the department for credit. Partial pack returns are limited to one pack return per register where tickets have been sold for that game. At the same time partial packs are returned, the retailer must return all eligible partial packs and all full packs for that game remaining in his inventory. No additional partial packs or full packs will be accepted from the retailer by the department for credit after partial packs have been returned.

C. All tickets in the possession of a retailer remaining unsold at the announced end of the game, the return of which are not prohibited by § 2.12 B, whether partial pack or full pack, must be returned to the department not later than 21 calendar days after the announced end of each instant game or any final prize drawing or no credit will be allowed to the retailer for tickets remaining unsold by that retailer.

PART III.
PAYMENT OF PRIZES FOR INSTANT GAMES.

§ 3.1. Prize winning tickets.

Prize-winning instant tickets are those that have been validated and determined in accordance with the rules and regulations of the department to be official prize winners. Consistent with these regulations, criteria and specific rules for winning prizes shall be published and posted by the director for each instant game and made available for all players. Final validation and determination of prize winning tickets remains with the department.

§ 3.2. Unclaimed prizes.

All instant game winning tickets shall be received for payment as prescribed in these regulations within 180 days after the announced end of the game or of the event which caused the ticket to be a winning entry, whichever is later. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day. Tickets which have been mailed in an envelope bearing a *United States Postal Service* postmark on or before the 180th day will be deemed to have been received on time.

A. Any non-low-tier instant game cash prize which has been won as a result of a drawing but which is not claimed within 180 days after the instant game drawing shall revert to the State Literary Fund.

B. Any non-low-tier instant game cash prize which has been won other than by drawing, but which is not claimed within 180 days after the announced end of the instant game shall revert to the State Literary Fund.

C. Any instant game low-tier prize-winning ticket which has been purchased but which is not claimed within 180 days after the announced end of the instant game shall revert as a bonus compensation to the account of the retailer which sold the instant game low-tier prize-winning ticket.

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

§ 3.3. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless otherwise determined by the director.

§ 3.4. No prize paid to people under 18 *years of age* .

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.*

§ 3.5. Where prizes claimed.

Winners may claim instant game prizes from the retailer from whom the ticket was purchased or the department in the manner specified in these regulations *or in game rules* .

§ 3.6. Validating winning tickets.

A. Winning tickets shall be validated by the retailer or the department as set out in these regulations or in any other manner which the director may determine.

B. Any instant lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

§ 3.7. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is $601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service.

1. If the department, a retailer or these regulations require that a claim form be filed, the FEIN shall be shown on the claim form.

2. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

3. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate one individual in whose name the claim shall be entered and that person's social security number shall be furnished.

4. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate judicial order.

§ 3.8. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

§ 3.9. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

§ 3.10. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the director and employees of the department, terminates upon payment of a lottery prize.

§ 3.11. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set off for delinquent debts owed to any agency eligible to participate in the ~~Set-Off~~ *Setoff* Debt Collection Act if the agency has registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

§ 3.12. When periodic prize payment may be delayed.

The director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed payments shall be brought up to date immediately upon the director's confirmation. Delayed payments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim.

§ 3.13. Ticket is bearer instrument.

A ticket that has been legally issued by a lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

§ 3.14. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification and the submission of a prize claim form if one is required, unless otherwise delayed in accordance with these regulations.

§ 3.15. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

§ 3.16. Penalty for counterfeit or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a forged, counterfeit or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

§ 3.17. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an instant game ticket the prize for which is a free ticket or is $25 or less.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;

2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

§ 3.18. Erroneous or mutilated ticket.

The department is not liable for erroneous or mutilated tickets. The director, at his option, may replace an erroneous or mutilated ticket with an unplayed ticket for the same or a later instant game.

§ 3.19. Retailer to pay low-tier prizes.

Low-tier prizes (those of $25 or less in cash or free instant game tickets) shall be paid by the retailer who sold the winning ticket, or by the department at the option

of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

§ 3.20. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If payment of a prize by a check presented to a claimant by a retailer is denied for any reason, the retailer is subject to the same service charge interest and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for low-tier prizes during all normal business hours.

4. Prize claims shall be paid only at the location specified on the license.

5. The department will reimburse a retailer for prizes from $26 to and including $600 paid up to 180 days after an instant game ends.

6. In no case shall a retailer impose a fee, or additional charge, for cashing a winning lottery instant game ticket.

§ 3.21. Retailer to validate winning ticket.

Before paying a prize claim, the retailer should validate the winning ticket. The retailer should follow validation procedures listed in these regulations or obtained from the department. Retailers who pay claims without validating the ticket do so at their own financial risk.

§ 3.22. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize-winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

§ 3.23. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims paid in error.

§ 3.24. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

§ 3.25. Prizes of $600 or less.

A retailer may elect to pay instant prizes from $26 to and including $600 won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. If the retailer elects to pay prizes of $600 or less, the following terms and conditions apply:

1. The retailer shall execute an agreement with the department to pay higher prize limits.

2. The retailer shall pay all prizes agreed to up to and including $ 600 on validated tickets presented to that retailer.

3. The retailer shall display special informational material provided by or approved by the department informing the public of the exceptional prize payments available from that retailer.

4. Nothing in this section shall be construed to prevent the department from accepting an agreement from a retailer to pay prize amounts $26 or more but less than $601.

§ 3.26. Additional validation requirements.

Before paying any prize from $26 to and including $600, the retailer or the department should:

1. Reserved

2. Inspect the ticket to assure that it conforms to each validation criterion listed in these regulations and to any additional criteria the director may specify;

3. Report to the department the ticket number, validation code and validation number of the ticket; and

4. Obtain an authorization number for prize payment from the department.

§ 3.27. When prize shall be claimed from the department.

The department will pay prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present a completed claim form and the signed ticket at any department regional office or mail both the completed claim form and the signed ticket to the department central office.

2. If a ticket holder is unable to return to the retailer from which the ticket was purchased to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both a completed

claim form and the signed ticket to the department central office.

3. If the prize amount is over the limit paid by the retailer from which the ticket was purchased, the ticket holder may present a completed claim form, if required, and the signed ticket to any department regional office or mail both a completed claim form and the signed ticket to the department central office.

§ 3.28. Prizes of $25,000 or less.

Prizes of $25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.29. Prizes of more than $25,000.

~~Prizes~~ *Unless otherwise determined by the department, prizes* of more than $25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.30. When ~~claims~~ *claim* form required.

A ~~claims~~ *claim* form for a winning ticket may be obtained from any department office or any lottery sales retailer.

A. ~~Claims~~ *Claim* forms shall be required to claim any prize from the department's central office.

B. ~~Claims~~ *Claim* forms shall be required to claim any prize of $ 601 or more from the department's regional offices.

C. Reserved.

D. The director may, at his discretion, require ~~claims~~ *claim* forms to be filed to claim prizes.

§ 3.31. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

A. If the claim is not valid, the department will notify the ticket holder promptly.

B. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

C. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.32. Withholding, notification of prize payments.

A. When paying any prize of $601 or more, the department shall:

1. File the appropriate income reporting form(s) with the state Department of Taxation and the federal Internal Revenue Service; and

2. Withhold any federal and state taxes from any winning ticket in excess of $5,001.

B. Additionally, when paying any prize of $101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's ~~Set Off~~ *Setoff* Debt Collection ~~Program~~ *Act* .

§ 3.33. Grand prize event.

If an instant game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director.

2. Participation in the drawing(s) shall be limited to those tickets which are actually received and validated by the department on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent instant game. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each instant game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 3.34. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

§ 3.35. Valid ticket described.

To be valid, a Virginia lottery ~~game~~ ticket shall meet all of the validation requirements *contained in the rules for the specific instant game and* listed here:

1. The ticket shall have been issued by the department in an authorized manner.

2. The ticket shall not be altered, unreadable, reconstructed, or tampered with in any way.

3. The ticket shall not be counterfeit in whole or in part.

4. The ticket shall not have been stolen or appear on any list of void or omitted tickets on file with the department.

5. The ticket shall be complete and not blank or partly blank, miscut, misregistered, defective, or printed or produced in error.

6. The ticket shall have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one ticket number, exactly one validation code, and exactly one validation number. These items shall be present in their entirety, legible, right side up, and not reversed in any manner.

7. The validation number of an apparent winning ticket shall appear on the department's official list of validation numbers of winning tickets provided by the vendor of the instant tickets. A ticket with that validation number shall not have previously been paid.

8. The ticket shall pass all additional confidential validation requirements set by the department.

§ 3.36. Invalid ticket.

An instant ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its instant game is invalid. An invalid ticket is not eligible for any prize.

§ 3.37. Replacement of ticket.

The director may replace an invalid ticket with an unplayed ticket from the same or another instant game. If a defective ticket is purchased, the department's only liability or responsibility shall be to replace the defective ticket with an unplayed ticket from the same or another instant game or to refund the purchase price, at the department's option.

§ 3.38. When ticket is partially mutilated or not intact.

If an instant ticket is partially mutilated or if the ticket is not intact but can still be validated by other validation tests, the director may pay the prize for that ticket.

§ 3.39. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

§ 3.40. When prize payable over time.

Unless the rules for any specific instant game provide otherwise, any cash prize of $100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

§ 3.41. Rounding total prize payment.

When a prize or share is to be paid over time, except for the first payment, the director may round the actual amount of the prize or share to the nearest $1,000 to facilitate purchase of an appropriate funding mechanism.

§ 3.42. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

Notice: The forms used in administering the State Lottery Department Instant Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Retailer License Application
Retailer Location Form
Personal Data Form (SLD-0061; Rev. 10/93)
Retailer Data Collection
Virginia Lottery Retailer License
Commonwealth of Virginia Lottery Bond Application
Special Notice on Bonding for Lottery Retailers (Renewal)
Authorization Agreement for Preauthorized Payments (SLD-0035A)
Winner Claim Form
Accounts Receivable Transaction Form (Returned Item Debits)
Accounting Transaction Form
Virginia Lottery Retailer Advertising Approval Form
Virginia Lottery Agreement to Pay Mid-Tier Prizes
Virginia Lottery Ticket Dispenser Agreement
Virginia Lottery Returned Ticket Receipt, Full Pack Returns
Virginia Lottery Returned Ticket Receipt, Partial Pack Returns
Ticket Invoice
Virginia Lottery Stolen Ticket Report
Winner Gram
We're Sorry But...
Agreement to Share Ownership and Proceeds of Lottery Ticket
Statement of Person(s) Receiving Gambling Winnings, Form 5754
Instant Ticket Vending Machine Form (SLD-0043; 7/93)

VA.R. Doc. No. R94-142; Filed October 27, 1993, 9:16 a.m.

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Title of Regulation: **VR 447-02-2. On-Line Game Regulations.**

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Public Hearing Date: January 24, 1994 - 10 a.m.
Written comments may be submitted until January 21, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 58.1-4007 of the Code of Virginia grants to the State Lottery Board the power to adopt regulations governing the establishment and operation of a lottery.

Purpose: The proposed regulatory changes incorporate numerous housekeeping, technical and substantive changes throughout the On-Line Game Regulations, including lottery retailer conduct, license and operational fees, license standards, validation requirements, payment of prizes and disposition of unclaimed prizes.

Substance: The proposed amendments:

1. Add a provision to §§ 1.9 and 3.9 stating that a cash prize or free ticket purchased by individual(s) ineligible to play a lottery game shall revert to the State Lottery Fund;

2. Identify in § 2.9 the installation fee for a self-service terminal;

3. Authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 2.11;

4. Provide in § 3.6 that the department shall not redeem prize-winning tickets previously cancelled by a retailer;

5. Stipulate in § 3.24 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets; and

6. Set out the procedure in § 3.33 for the transfer to the Literary Fund of an unclaimed lottery prize if there are multiple winning tickets, one or more of which are not claimed.

Additionally, there are numerous housekeeping and technical changes made throughout these regulations.

Issues: Revisions are promulgated to conform to statutory provisions and lottery licensing and ticket validation requirements.

Impact: The proposed change to § 2.9 imposes an installation fee for self-service terminals of $275 for existing on-line lottery retailers and $395 for new retailers. The impact to the general public shall be limited to new lottery retailers. The additional licensing standards will ensure integrity of lottery retailers.

Summary:

The proposed amendments (i) add a provision to §§ 1.9 and 3.9 stating that a cash prize or free ticket purchased by individual(s) ineligible to play a lottery game shall revert to the State Lottery Fund; (ii) identify in § 2.9 the installation fee for a self-service terminal; (iii) authorize the director to refuse to license a retailer if he has been permanently suspended from a federal or state licensing or authorization program as provided in § 2.11; (iv) provide in § 3.6 that the department shall not redeem prize-winning tickets previously cancelled by a retailer; (v) stipulate in § 3.24 that retailers may not impose a fee, additional charge, or discount for cashing winning lottery tickets; and (vi) set out the procedure in § 3.33 for the transfer to the Literary Fund of an unclaimed prize if there are multiple winning tickets, one or more of which are not claimed. Additionally, the proposed amendments incorporate numerous housekeeping and technical changes througout these regulations.

VR 447-02-2. On-Line Game Regulations.

PART I.
ON-LINE GAMES.

§ 1.1. General definitions for on-line games.

The words and terms, when used in any of the department's regulations, shall have the same meaning, as defined in these regulations, unless the context clearly indicates otherwise. Definitions that relate to instant games are incorporated by reference in the On-Line Game Regulations (VR 447-02-2).

"Auto pick" means the same as "easy pick."

"Breakage" means the fraction of a dollar not paid out due to rounding down and shall be used exclusively to fund prizes.

"Cancelled ticket" means a ticket that (i) has been placed into the terminal, whereupon the terminal must read the information from the ticket and cancel the transaction or (ii) whose validation number has been manually entered into the terminal via the keyboard and cancelled.

"Certified drawing" means a drawing in which a lottery official and an independent certified public accountant

attest that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Confirmation (or registration) notice" means the subscription notification letter or card mailed to the subscriber which confirms the game numbers for the game panel played, and the plan start date and number of draws.

"Drawing" means a procedure by which the lottery randomly selects numbers or items in accordance with the specific game rules for those games requiring random selection of number(s) or item(s).

"Duplicate ticket" means a ticket produced by any means other than by an on-line terminal with intent to imitate the original ticket.

"Easy pick" means computer generated numbers or items.

"Game panel" means the play(s) entered on a playslip by the player or by the subscriber on the subscription application.

"Game numbers" means the numbers designated by the player on the playslip or subscription application or the computer-generated numbers if easy pick is selected.

"Group-designated agent" means the individual listed on the back of a ticket or on the subscription application who is elected by the group of players to act as the representative or subscriber on the group's behalf in handling all correspondence and payment disbursements resulting from the group's activity.

"Number of draws" means the actual number of draws for which a multiple play or subscription is valid.

"On-line game" means a lottery game, the play of which is dependent upon the use of an on-line terminal in direct communication with an on-line game main frame operated by or at the direction of the department.

"On-line lottery retailer" means a licensed lottery retailer who has entered an agreement with the department to sell on-line tickets at a specific location.

"On-line system" means the department's on-line computer system consisting of on-line terminals, central processing equipment, and a communication network.

"On-line terminal" means the department's computer hardware through which a combination of numbers or items is selected or generated and through which on-line tickets are generated and claims may be validated.

"On-line ticket" means a computer-generated ticket issued by an on-line lottery retailer to a player as a receipt for the number, numbers, or items or combination of numbers or items the player has selected.

"Person" means a natural person and may extend and be applied to groups of persons as well as corporations, companies, partnerships, and associations, unless the context indicates otherwise.

"Plan" means the duration of the subscription as determined by the number of draws designated by the subscriber on the subscription application or renewal notice.

"Play" means a wager on a single set of selected numbers.

"Player-selected item" means a number or item or group of numbers or items selected by a player in connection with an on-line game. Player-selected items include selections of items randomly generated by the computer on-line system. Such computer-generated numbers or items are also known as "auto picks," "easy picks" or "quick picks."

"Playslip" means an optically readable card issued by the department, used in marking a player's game plays.

"Present at the terminal" means that a player remains physically present at the on-line lottery terminal from the time the player's order for the purchase of on-line lottery tickets is paid for and accepted by the lottery retailer until the processing of the order is completed and the tickets are delivered to the player at the licensed on-line retailer terminal location.

"Quick pick" means the same as "easy pick."

"Registration" means the process of entering subscripton information concerning the subscriber, plan and selected numbers into the central computer system.

"Retailer," as used in these on-line game regulations, means a licensed on-line lottery retailer, unless the context clearly requires otherwise.

"Roll stock" or *"ticket stock"* means the paper roll placed into the lottery retailer terminals from which a unique lottery ticket is generated by the computer, displaying the player selected item(s) or number(s).

"Share" means a percentage of ownership in a winning ticket or subscription plan.

"Start date" means the first draw date for which a multiple play or subscription is effective.

"Subscriber" means the individual designated on the subscription application whose entry has been entered into the department's central computer system and who has received confirmation from the department of his designated numbers and includes the group-designated agent for a group, organization, family unit, or club.

"Subscription" means a method to play a lottery on-line game by purchasing subscription plays, using a designated set of numbers, for a specific period of time, and for which the player is automatically entered in each drawing or game during the period for which the subscription is effective.

"Subscription application" means the form(s) used by an individual or group-designated agent to play lottery games by subscription.

"Subscription renewal" means the process by which a subscription plan is renewed by the subscriber in accordance with procedures established by the department.

"Ticket" or "tickets" means an on-line lottery game ticket produced by a terminal on ticket stock issued by the department, the front of which contains the applicable game caption, information identifying the drawing or drawings for which the ticket is valid, one or more lettered game plays, the total price of the ticket, a bar code representation of the ticket serial number, a ticket validation number, an alphabetic dual security characterization, and the time the ticket was issued. The front of the ticket may also contain a message to the player. On the back of the ticket must be a ticket stock sequential number preceded or followed by two letters and a synopsis of lottery rules. The front of the ticket may, in lieu of game information, bear information designating the ticket as a coupon which is redeemable for some designated benefit.

"Winning combination" means two or more items or numbers selected by a drawing.

§ 1.2. Development of on-line games.

The director shall select, operate, and contract for the operation of on-line games which meet the general criteria set forth in these regulations. The board shall determine the specific details of each on-line lottery game after consultation with the director. These details include, but are not limited to:

1. The type or types of on-line lottery games,

2. Individual prize amounts and overall prize structure,

3. Types of noncash prizes, if any,

4. The amount and type of any jackpot or grand prize which may be awarded and how awarded, and

5. Chances of winning.

§ 1.3. Prize structure.

The prize structure for any on-line game shall be designed to return to winners approximately 50% of gross sales.

A. The specific prize structure for each type of on-line game shall be determined in advance by the board.

B. From time to time, the board may determine temporary adjustments to the prize structure to account for breakage or other fluctuations in the anticipated redemption of prizes.

§ 1.4. Drawing and selling times.

A. Drawings shall be conducted at times and places designated by the director and publicly announced by the department.

B. On-line tickets may be purchased up to a time prior to the drawing as specified in the on-line drawing rules. That time will be designated by the director.

§ 1.5. Ticket price.

A. The sale price of a lottery ticket for each game will be determined by the board. These limits shall not operate to prevent the sale of more than one lottery play on a single ticket. Unless authorized by the board, lottery retailers may not discount the sale price of on-line game tickets or provide free lottery tickets as a promotion with the sale of on-line tickets. This section shall not prevent a licensed retailer from providing free on-line tickets with the purchase of other goods or services customarily offered for sale at the retailer's place of business; provided, however, that such promotion shall not be for the primary purpose of inducing persons to participate in the lottery. (see § 1.9)

B. This section shall not apply to the redemption of a winning on-line game ticket the prize for which is another free ticket.

§ 1.6. Ticket cancellation.

A ticket may be cancelled and a refund of the purchase price obtained at the request of the bearer of the ticket under the following conditions:

1. To be accepted for cancellation, the ticket must be presented to the lottery retailer location at which the ticket was sold, prior to the time of the drawing and within the same business day it was purchased.

2. Cancellation may only be effected by the following two procedures:

a. Inserting the ticket into the lottery terminal, whereupon the terminal must read the information from the ticket and cancel the transaction.

b. After first determining that the preceding procedure cannot be utilized successfully to cancel the ticket, the terminal operator may cancel the ticket by manually entering the ticket validation number into the terminal via the keyboard.

Any ticket which cannot be cancelled by either of these procedures remains valid for the drawing for which purchased. Any ticket which is mutilated, damaged or has been rendered unreadable, and cannot be inserted into or read by the lottery terminal or whose validation number cannot be read and keyed into the terminal, cannot be cancelled by any other means.

3. The cancelled ticket must be surrendered by the bearer to the retailer.

4. On a case-by-case basis, credit may be provided to retailers for tickets which could not be cancelled by either of the two methods described in § 1.6 2. Such credit may be given provided unusual, verifiable circumstances are present which show that the department's computer system could not accept the cancellation within the same day the ticket was purchased or that the ticket was produced by an unusual retailer error or if the ticket was issued by another lottery-approved device. The retailer must notify the department's Hotline prior to the time of the drawing and within the same business day the ticket was purchased.

5. The director may approve credit for other cancellation requests not described in this section.

6. The lottery's internal auditor will audit cancelled tickets on a sample basis.

§ 1.7. Chances of winning.

The director shall publicize the overall chances of winning a prize in each on-line game. The chances may be printed in informational materials.

§ 1.8. Licensed retailers' compensation.

A. ~~Licensed~~ *Unless otherwise determined by the board, licensed* retailers shall receive 5.0% compensation on all net sales from on-line games. "Net sales" are gross sales less cancels.

B. The board shall approve any bonus or incentive system for payment to retailers. The director will publicize any such system by administrative order. The director may then award such cash bonuses or other incentives to retailers. Retailers may not accept any compensation for the sale of lottery tickets other than compensation approved under this section, regardless of the source.

§ 1.9. Retailers' conduct.

A. Retailers shall sell on-line tickets at the price fixed by the board, unless the board allows reduced prices or ticket give-aways.

B. All ticket sales shall be for cash, check, cashier's check, traveler's check or money order at the discretion of and in accordance with the licensed retailer's policy for accepting payment by such means. A ticket shall not be purchased with credit cards, food stamps or food coupons.

C. All ticket sales shall be final. Retailers shall not accept ticket returns except as allowed by department regulations or policies, or with the department's specific approval.

D. Tickets shall be sold during all normal business hours of the lottery retailer when the on-line terminal is available unless the director approves otherwise. Retailers shall give prompt service to lottery customers present and waiting at the terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of on-line ticket orders for which the customer is not present at the terminal. Failure to render prompt service to lottery customers may result in administrative action by the director including but not limited to license suspension or revocation or disabling the on-line terminal so that it will not process transactions.

E. Tickets shall be sold only at the location listed on each retailer's license from the department. For purposes of this section, the sale of an on-line lottery ticket at the licensed location means a lottery transaction in which all elements of the sale between the licensee and the player shall take place on site at the lottery terminal including the exchange of consideration, the exchange of the playslip if one is used, and the exchange of the ticket. No part of the sale may take place away from the lottery terminal.

F. On-line retailers must offer for sale all lottery products offered by the department.

G. An on-line game ticket shall not be sold to, purchased by, given as a gift to or redeemed from any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket by any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and cash prizes greater than $25 revert to the State Lottery Fund.*

H. On-line retailers shall furnish players with proper claim forms provided by the department.

I. On-line retailers shall post winning numbers prominently.

J. On-line retailers and employees who will operate on-line equipment shall attend training provided by the department and allow only trained personnel to operate terminals.

K. Unsupervised retailer employees who sell or otherwise vend lottery tickets must be at least 18 years of age. Employees not yet 18 but at least 16 years of age

may sell or vend lottery tickets so long as they are supervised by the manager or supervisor in charge at the location where the tickets are being sold.

L. Federal Internal Revenue Code, 26 U.S.C. 60501 requires lottery retailers who receive more than $10,000 in cash in one transaction, two or more related transactions in the aggregate, or a series of connected transactions exceeding $10,000 in the aggregate, from a single player or his agent, to file a Form 8300 with the Internal Revenue Service. IRS encourages retailers to report all suspicious transactions, even if they do not meet the $10,000 threshold. "Cash" includes coin and currency only and does not include bank checks or drafts, traveler's checks, wire transfers, or other negotiable or monetary instruments not customarily accepted as money.

§ 1.10. End of game; suspension.

The director may suspend or terminate an on-line game without advance notice if he finds that this action will serve and protect the public interest.

PART II.
LICENSING OF RETAILERS FOR ON-LINE GAMES.

§ 2.1. Licensing.

The director may license persons as lottery retailers for on-line games who will best serve the public convenience and promote the sale of tickets and who meet the eligibility criteria and standards for licensing.

For purposes of this part on licensing, "person" means an individual, association, partnership, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including its counties, cities, and towns.

§ 2.2. Eligibility.

A. Eighteen years of age and bondable.

Any person who is 18 years of age or older and who is bondable may be considered for licensure, except no person may be considered for licensure:

1. Who will be engaged primarily in the business of selling lottery tickets;

2. Who is a board member, officer or employee of the State Lottery Department or who resides in the same household as board member, officer or employee of the department; or

3. Who is a vendor to the department of instant or on-line lottery tickets or goods or data processing services, whose tickets, goods or services are provided directly to the lottery department, or whose business is owned by, controlled by, or affiliated with a vendor of instant or on-line lottery tickets or goods or data processing services whose tickets, goods or services are provided directly to the lottery department.

B. Form submission.

The submission of forms or data for licensure does not in any way entitle any person to receive a license to act as an on-line lottery retailer.

§ 2.3. General standards for licensing.

A. Selection factors for licensing.

The director may license those persons who, in his opinion, will best serve the public interest and public trust in the lottery and promote the sale of lottery tickets. The director will consider the following factors before issuing or renewing a license:

1. The financial responsibility and integrity of the retailer, to include:

a. A credit and criminal record history search or when deemed necessary a full investigation of the retailer;

b. A check for outstanding delinquent state tax liability;

c. A check for required business licenses, tax and business permits; and

d. An evaluation of physical security at the place of business, including insurance coverage.

2. The accessibility of his place of business to public, to include:

a. The hours of operation compared to the on-line system selling hours;

b. The availability of parking including ease of ingress and egress to parking;

c. Public transportation stops and passenger traffic volume;

d. The vehicle traffic density, including levels of congestion in the market area;

e. Customer transaction count within the place of business;

f. Other factors indicating high public accessibility and public convenience when compared with other retailers; and

g. Adequate space and physical layout to sell a high volume of lottery tickets efficiently.

3. The sufficiency of existing lottery retailers to serve the public convenience, to include:

a. The number of and proximity to other lottery retailers in the market area;

b. The expected impact on sales volume of potentially competing lottery retailers;

c. The adequacy of coverage of all regions of the Commonwealth with lottery retailers; and

d. The population to terminal ratio, compared to other geographical market areas.

4. The volume of expected lottery ticket sales, to include:

a. Type and volume of the products and services sold by the retailer;

b. Dollar sales volume of the business;

c. Sales history of the market area;

d. Sales history for instant tickets, if already licensed as an instant retailer;

e. Volume of customer traffic in place of business; and

f. Market area potential, compared to other market areas.

5. The ability to offer high levels of customer service to on-line lottery players, including:

a. A history demonstrating successful use of lottery product related promotions;

b. Volume and quality of point of sale display;

c. A history of compliance with lottery directives;

d. Ability to display jackpot prize amounts to pedestrians and vehicles passing by;

e. A favorable image consistent with lottery standards;

f. Ability to pay prizes of $600 or less during maximum selling hours, compared to other area retailers;

g. Commitment to authorize employee participation in all required on-line lottery training; and

h. Commitment and opportunity to post jackpot levels near the point of sale.

B. Additional factors for selection.

The director may develop and, by director's order, publish additional criteria which, in the director's judgment, are necessary to serve the public interest and public trust in the lottery.

C. Filing of forms with the department.

After notification of selection as an on-line lottery retailer, the retailer shall file required forms with the department. The retailer must submit all information required to be considered for licensing. Failure to submit required forms and information within the times specified in these regulations may result in the loss of the opportunity to become or remain a licensed on-line retailer. The forms to be submitted shall include:

1. Signed retailer agreement;

2. Signed EFT Authorization form with a voided check or deposit slip from the specified account; and

3. Executed bond requirement.

§ 2.4. Bonding of lottery retailers.

A. Approved retailer to secure bond.

A lottery retailer approved for licensing shall obtain a surety bond in the amount of $10,000 from a surety company entitled to do business in Virginia. If the retailer is already bonded for instant games, a second bond will not be required. However, the amount of the original bond must be increased to $10,000. The purpose of the surety bond is to protect the Commonwealth from a potential loss in the event the retailer fails to perform his responsibilities.

1. Unless otherwise provided under subsection C of this section, the surety bond shall be in the amount and penalty of $10,000 and shall be payable to the State Lottery Department and conditioned upon the faithful performance of the lottery retailer's duties.

2. Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "Bonding Requirement" portion of the "On-Line License Approval Notice" to the State Lottery Department to be filed with his record.

B. Continuation of surety bond on annual license review.

A lottery retailer whose license is being reviewed shall:

1. Obtain a letter or certificate from the surety company to verify that the surety bond is being continued for the annual license review period; and

2. Submit the surety company's letter or certificate with the required annual license review fee to the State Lottery Department.

C. Sliding scale for surety bond amounts.

The department may establish a sliding scale for surety bonding requirements based on the average volume of lottery ticket sales by a retailer to ensure that the Commonwealth's interest in tickets to be sold by a licensed lottery retailer is adequately safeguarded. Such sliding scale may require a surety bond amount either greater or lesser than the amount fixed by subsection A of this section.

D. Effective date for sliding scale.

The sliding scale for surety bonding requirements will become effective when the director determines that sufficient data on lottery retailer ticket sales volume activity are available. Any changes in a retailer's surety bonding requirements that result from instituting the sliding scale will become effective only at the time of the retailer's next renewal action.

E. Limit on sales in excess of bond.

Under no circumstances shall the retailer allow total, weekly, net on-line and instant sales from a single location for the seven-day period ending at the close of the lottery fiscal week (normally Tuesday night) to exceed five times the amount of the bond for that licensed location, unless such retailer has first obtained written permission from the director. The director, in his sole discretion, may require additional bond or other security as a condition for continued sales, may accelerate the collection from the retailer of the net proceeds from the sale of lottery tickets, or may temporarily suspend the requirement that no retailer may sell lottery tickets in excess of five times the amount of the bond for that licensed location for all on-line lottery retailers or for individual retailers on a case-by-case basis.

§ 2.5. Lottery bank accounts and EFT authorization.

A. Approved retailer to establish lottery bank account.

A lottery retailer approved for licensing shall establish a separate bank account to be used exclusively for lottery business in a bank participating in the automatic clearing house (ACH) system. A single bank account may be used for both on-line and instant lottery business.

B. Retailer's use of lottery account.

The lottery account will be used by the retailer to make funds available to permit withdrawals and deposits initiated by the department through the electronic funds transfer (EFT) process to settle a retailer's account for funds owed by or due to the retailer from the sale of tickets and the payment of prizes. All retailers shall make payments to the department through the electronic funds transfer (EFT) process unless the director designates another form of payment and settlement under terms and conditions he deems appropriate.

C. Retailer responsible for bank charges.

The retailer shall be responsible for payment of any fees or service charges assessed by the bank for maintaining the required account.

D. Retailer to authorize electronic funds transfer.

Within 15 calendar days of receipt of the "On-Line License Approval Notice," the lottery retailer shall return the properly executed "On-Line Electronic Funds Transfer Authorization" portion of the "License Approval Notice" to the department recording the establishment of his account.

E. Change in retailer's bank account.

If a retailer finds it necessary to change his bank account from one bank account to another, he must submit a newly executed "Electronic Funds Transfer Authorization" form for the new bank account. The retailer may not discontinue use of his previously approved bank account until he receives notice from the department that the new account is approved for use.

F. Director to establish EFT account settlement schedule.

The director will establish a schedule for processing the EFT transactions against retailers' lottery bank accounts and issue instructions to retailers on how settlement of accounts will be made.

§ 2.6. Deposit of lottery receipts; interest and penalty for late payment; dishonored EFT transfers or checks.

A. Payment due date.

Payments shall be due as specified by the director in the instructions to retailers regarding the settlement of accounts.

B. Penalty and interest charge for late payment.

Any retailer who fails to make payment when payment is due will be contacted by the department and instructed to make immediate deposit. If the retailer is not able to deposit the necessary funds or if the item is returned to the department unpaid for a second time, the retailer's on-line terminal will be inactivated. The retailer will not be reactivated until payment is made by cashier's check, certified check or wire transfer, and if deemed a continuing credit risk by the department, not until an informal hearing is held to determine if the licensee is able and willing to meet the terms of his license agreement. Additionally, interest will be charged on the moneys due plus a $25 penalty. The interest charge will

be equal to the "Underpayment Rate" established pursuant to § 6621(a)(2) of the Internal Revenue Code of 1954, as amended. The interest charge will be calculated beginning the date following the retailer's due date for payment through the day preceding receipt of the late payment by the department for deposit.

C. Service charge for dishonored EFT transfer or bad check.

In addition to the penalty authorized by subsection B of this section, the director will assess a service charge of $25 against any retailer whose payment through electronic funds transfer (EFT) or by check is dishonored.

D. Service charge for debts referred for collection.

If the department refers a debt of any retailer to the Attorney General, the Department of Taxation or any other central collection unit of the Commonwealth, the retailer owing the debt shall be liable for an additional service charge which shall be in the amount of the administrative costs associated with the collection of the debt incurred by the department and the agencies to which the debt is referred.

E. Service charge, interest and penalty waived.

The service charge, interest and penalty charges may be waived when the event which would otherwise cause a service charge, interest or penalty to be assessed is not in any way the fault of the lottery retailer. For example, a waiver may be granted in the event of a bank error or lottery error.

§ 2.7. License term and annual review.

A. License term.

A general on-line license for an approved lottery retailer shall be issued on a perpetual basis subject to an annual determination of continued retailer eligibility and the payment of an annual fee fixed by the board. A general on-line license requires the retailer to sell both on-line and instant lottery tickets.

B. Annual license review.

The annual fee shall be collected within the 30 days preceding a retailer's anniversary date. Upon receipt of the annual fee, the general license shall be continued so long as all eligibility requirements are met. The director may implement a staggered, monthly basis for annual license reviews and allow for the proration of annual license fees. This section shall not be deemed to allow for a refund of license fees when a license is terminated, revoked or suspended for any other reason.

C. Amended license term.

The annual fee for an amended license will be due on the same date as the fee for the license it replaced.

D. Special license.

The director may issue special licenses. Special licenses shall be for a limited duration and under terms and conditions that he determines appropriate to serve the public interest. On-line game lottery retailers currently licensed by the department are not required to obtain an additional surety bond for the purposes of obtaining a special event license.

E. Surrender of license certificate.

If the license of a lottery retailer is suspended, revoked or not continued from year to year, the lottery retailer shall surrender the license certificate upon demand.

§ 2.8. License fees.

A. License fee.

~~The~~ *Unless otherwise determined by the board, the* fee for a lottery retailer general license to sell on-line game tickets shall be $25. Payment of this fee shall entitle the retailer to sell both on-line and instant game tickets. The general license fee to sell on-line game tickets shall be paid for each location to be licensed. This fee is nonrefundable.

B. Annual license fee.

The annual fee for a lottery retailer general license to sell on-line game tickets shall be an amount determined by the board at its November meeting or as soon thereafter as practicable for all reviews occurring in the next calendar year. The fee shall be designed to recover all or a portion of the annual costs of the department in providing services to the retailer. The fee shall be paid for each location for which a license is. This fee is nonrefundable. The fee shall be submitted within the 30 days preceding a retailer's anniversary date.

C. Amended license fee.

The fee for processing an amended license for a lottery retailer general license shall be an amount as determined by the board at its November meeting or as soon thereafter as practicable for all amendments occurring in the next calendar year. The amended license fee shall be paid for each location affected. This fee is nonrefundable. An amended license shall be submitted in cases where a business change has occurred.

§ 2.9. Fees for operational costs.

A. Installation fee.

The fee for initial terminal telecommunications installation for the on-line terminal shall be $275 unless otherwise determined by the director. ~~This fee~~

Additionally, the installation fee for a self-service terminal shall be $275 for existing on-line retailers and $395 for new retailers. All fees may be subject to change based upon an annual cost review by the department.

1. If the retailer has purchased a business where a terminal is presently installed or telecommunication service is available, a fee of $25 per year shall be charged upon issuance of a new license.

2. No installation fee will be charged if interruption of service to the terminal has not occurred.

B. Weekly on-line telecommunications line charge.

Each retailer shall be assessed a weekly charge of $15 per week. This fee may be subject to change based upon an annual cost review by the department.

§ 2.10. Transfer of license prohibited; invalidation of license.

A. License not transferrable.

A license issued by the director authorizes a specified person to act as a lottery retailer at a specified location as set out in the license. The license is not transferrable to any other person or location.

B. License invalidated.

A license shall become invalid in the event of any of the following circumstances:

1. Change in business location;

2. Change in business structure (e.g., from a partnership to a sole proprietorship); or

3. Change in the business owners listed on the original personal data forms for which submission of a personal data form is required under the license procedure.

C. Amended personal data form required.

A licensed lottery retailer who anticipates any change listed in subsection B must notify the department of the anticipated change at least 30 calendar days before it takes place and submit an amended personal data form. The director shall review the changed factors in the same manner that would be required for a review of an original personal data form.

§ 2.11. Denial, suspension, revocation or of license.

A. Grounds for refusal to license.

The director may refuse to issue a license to a person if the person does not meet the eligibility criteria and standards for licensing as set out in these regulations or if:

1. The person has been convicted of a felony;

2. The person has been convicted of a crime involving moral turpitude;

3. The person has been convicted of any fraud or misrepresentation in any connection;

4. The person has been convicted of bookmaking or other forms of illegal gambling;

5. The person as been convicted of knowingly and willfully falsifying, or misrepresenting, or concealing a material fact or makes a false, fictitious, or fraudulent statement or misrepresentation;

6. The person's place of business caters to or is frequented predominantly by persons under 18 years of age *, excluding family-oriented businesses* ;

7. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons;

8. The nature of the person's business is not consonant with the probity of the Commonwealth; ~~or~~

9. The person has committed any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery ~~.~~ *; or*

10. The person has been suspended permanently from a federal or state licensing or authorization program and that person has exhausted all administrative remedies pursuant to the respective agency's regulations.

B. Grounds for refusal to license partnership or corporation.

In addition to refusing a license to a partnership or corporation under subsection A of this section, the director may also refuse to issue a license to any partnership or corporation if he finds that any general or limited partner or officer or director of the partnership or corporation has been convicted of any of the offenses cited in subsection A of this section.

C. Appeals of refusal to license.

Any person refused a license under subsection A or B may appeal the director's decision in the manner provided by VR 447-01-02, Part III, Article 2, § 3.4.

D. Grounds for suspension, revocation or refusal to continue license.

The director may suspend, revoke, or refuse to continue a license for any of the following reasons:

1. Failure to properly account for on-line terminal

ticket roll stock, for cancelled ticket, for prizes claimed and paid, or for the proceeds of the sale of lottery tickets;

2. Failure to file or maintain the required bond or the required lottery bank account;

3. Failure to comply with applicable laws, instructions, terms or conditions of the license, or rules and regulations of the department concerning the licensed activity, especially with regard to the prompt payment of claims;

4. Conviction, following the approval of the license, of any of the offenses cited in subsection A;

5. Failure to file any return or report or to keep records or to pay any fees or other charges as required by the state lottery law or the rules or regulations of the department or board;

6. Commission of any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

7. Failure to maintain lottery ticket sales at a level sufficient to meet the department's administrative costs for servicing the retailer, provided that the public convenience is adequately served by other retailers. This failure may be determined by comparison of the retailer's sales to a sales quota established by the director;

8. Failure to notify the department of a material change, after the license is issued, of any matter required to be considered by the director in the licensing process;

9. Failure to comply with lottery game rules;

10. Failure to meet minimum point of sale standards;

11. The person's place of business caters to or is frequented predominantly by persons under 18 years of age , *excluding family-oriented businesses* ;

12. The nature of the person's business constitutes a threat to the health or safety of prospective lottery patrons; ~~or~~

13. The nature of the person's business is not consonant with the probity of the Commonwealth : *; or*

14. Permanent revocation or suspension from any federal or state program whereby all administrative remedies pursuant to the respective agency's regulations have been exhausted.

E. Notice of intent to suspend, revoke or deny continuation of license.

Before taking action under subsection ~~E~~ *D* , the director will notify the retailer in writing of his intent to suspend, revoke or deny continuation of the license. The notification will include the reason or reasons for the proposed action and will provide the retailer with the procedures for requesting a hearing before the board. Such notice shall be given to the retailer at least 14 calendar days prior to the effective date of suspension, revocation or denial.

F. Temporary suspension without notice.

If the director deems it necessary in order to serve the public interest and maintain public trust in the lottery, he may temporarily suspend a license without first notifying the retailer. Such suspension will be in effect until any prosecution, hearing or investigation into possible violations is concluded.

G. Surrender of license and lottery property upon revocation or suspension.

A retailer shall surrender his license to the director by the date specified in the notice of revocation or suspension. The retailer shall also surrender the lottery property in his possession and give a final accounting of his lottery activities by the date specified by the director.

§ 2.12. Responsibility of lottery retailers.

Each retailer shall comply with all applicable state and federal laws, rules and regulations of the department, license terms and conditions, specific rules for all applicable lottery games, and directives and instructions which may be issued by the director.

§ 2.13. Display of license.

License displayed in general view. Every licensed lottery retailer shall conspicuously display his lottery license in an area visible to the general public where lottery tickets are sold.

§ 2.14. Display of material.

A. Material in general view.

Lottery retailers shall display lottery point-of-sale material provided by the director in a manner which is readily seen by and available to the public.

B. Prior approval for retailer-sponsored material.

A lottery retailer may use or display his own promotional and point-of-sale material, provided it has been submitted to and approved for use by the department in accordance with instructions issued by the director.

C. Removal of unapproved material.

The director may require removal of any licensed retailer's lottery promotional material that has not been

approved for use by the department.

§ 2.15. Inspection of premises.

Access to premises by department. Each lottery retailer shall provide access during normal business hours or at such other times as may be required by the director or state lottery representatives to enter the premises of the licensed retailer. The premises include the licensed location where lottery tickets are sold or any other location under the control of the licensed retailer where the director may have good cause to believe lottery materials or tickets are stored or kept in order to inspect the lottery materials or tickets and the licensed premises.

§ 2.16. Examination of records; seizure of records.

A. Inspection, auditing or copying of records.

Each lottery retailer shall make all books and records pertaining to his lottery activities available for inspection, auditing or copying as required by the director between the hours of 8 a.m. and 5 p.m., Mondays through Fridays and during the normal business hours of the licensed retailer.

B. Records subject to seizure.

All books and records pertaining to the licensed retailer's lottery activities may be seized with good cause by the director without prior notice.

§ 2.17. Audit of records.

The director may require a lottery retailer to submit to the department an audit report conducted by an independent certified public accountant on the licensed retailer's lottery activities. The retailer shall be responsible for the cost of only the first such audit in any one license term.

§ 2.18. Reporting requirements and settlement procedures.

Before a retailer may begin lottery sales, the director will issue to him instructions and report forms that specify the procedures for (i) ordering on-line terminal ticket roll stock; (ii) reporting receipts, transactions and disbursements pertaining to on-line lottery ticket sales; and (iii) settling the retailer's account with the department.

§ 2.19. Training of retailers and their employees.

Each retailer or anyone that operates an on-line terminal at the retailer's location will be required to participate in training given by the department for the operation of each game. The director may consider nonparticipation in the training as grounds for suspending or revoking the retailer's license.

§ 2.20. License termination by retailer.

The licensed retailer may voluntarily terminate his license with the department by first notifying the department in writing at least 30 calendar days before the proposed termination date. The department will then notify the retailer of the date by which settlement of the retailer's account will take place. The retailer shall maintain his bond and the required accounts and records until settlement is completed and all lottery property belonging to the department has been surrendered.

PART III.
ON-LINE TICKET VALIDATION REQUIREMENTS.

§ 3.1. Validation requirements.

To be valid, a Virginia lottery on-line game ticket shall meet all of the validation requirements listed here:

1. The original ticket must be presented for validation.

2. The ticket validation number shall be presented in its entirety and shall correspond using the computer validation file to the selected numbers printed on the ticket.

3. The ticket shall not be mutilated, altered, or tampered with in any manner. (see § 3.4)

4. The ticket shall not be counterfeited, forged, fraudulently made or a duplicate of another winning ticket.

5. The ticket shall have been issued by the department through a licensed on-line lottery retailer in an authorized manner.

6. The ticket shall not have been cancelled.

7. The ticket shall be validated in accordance with procedures for claiming and paying prizes. (see §§ 3.10 and 3.12)

8. The ticket data shall have been recorded in the central computer system before the drawing, and the ticket data shall match this computer record in every respect.

9. The player-selected items, the validation data, and the drawing date of an apparent winning ticket must appear on the official file of winning tickets and a ticket with that exact data must not have been previously paid.

10. The ticket may not be misregistered or defectively printed to an extent that it cannot be processed by the department.

11. The ticket shall pass any validation requirement contained in the rules published and posted by the director for the on-line game for which the ticket was issued.

12. The ticket shall pass all other confidential security checks of the department.

13. Any on-line lottery cash prize resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and reverts to the State Lottery Fund.

14. Playslips may be used to select a player's number or numbers to be played in an on-line game. If a playslip is used to select the player's number or numbers for an on-line game, the playslip number selections shall be manually marked and not marked by any electro-mechanical, electronic printing or other automated device. Any playslip marked by methods other than those authorized by these regulations is invalid and subject to seizure by the department if presented for play at any lottery terminal. Any tickets produced from the use of invalid playslips are also invalid and subject to seizure by the department. Nothing in this regulation shall be deemed to prevent a person with a physical handicap who would otherwise be unable to mark a playslip manually from using any device intended to permit such person to make such a mark for his sole personal use or benefit.

§ 3.2. Invalid ticket.

An on-line ticket which does not pass all the validation requirements listed in these regulations and any validation requirements contained in the rules for its on-line game is invalid. An invalid ticket is not eligible for any prize.

§ 3.3. Replacement of ticket.

The director may refund the purchase price of an invalid ticket. If a defective ticket is purchased, the department's only liability or responsibility shall be to refund the purchase price of the defective ticket.

§ 3.4. When ticket cannot be validated through normal procedures.

If an on-line ticket is partially mutilated or if the ticket cannot be validated through normal procedure but can still be validated by other validation tests, the director may pay the prize for that ticket.

§ 3.5. Director's decision final.

All decisions of the director regarding ticket validation shall be final.

§ 3.6. Prize winning tickets.

A. Validation of prize winning ticket.

Prize winning on-line tickets are those that have been validated in accordance with these regulations and the rules of the department and determined to be official prize winners. Criteria and specific rules for winning prizes shall be published for each on-line game and available for all players. Final validation and determination of prize winning tickets remain with the department.

B. Cancellation of prize winning ticket.

In cancelling on-line lottery tickets, retailers must comply with § 1.6 of these regulations. The department shall not redeem prizes for tickets which would have been prize-winning tickets but for the fact that they have been cancelled by the retailer.

§ 3.7. Unclaimed prizes.

A. Except for free ticket prizes, all claims for on-line game winning tickets must be ~~postmarked~~ *mailed in an envelope bearing a United States Postal Service postmark* or received for payment as prescribed in these regulations within 180 days after the date of the drawing for which the ticket was purchased. In the event that the 180th day falls on a Saturday, Sunday or legal holiday, a claimant may redeem his prize-winning ticket on the next business day only at a lottery regional office.

B. Any on-line lottery cash prize which remains unclaimed after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. Cash prizes do not include free ticket prizes or other noncash prizes such as merchandise, vacations, admissions to events and the like.

C. All claims for on-line game winning tickets for which the prize is a free ticket must be ~~postmarked~~ *mailed in an envelope bearing a United States Postal Service postmark* or received for redemption as prescribed in these regulations within 60 days after the date of the drawing for which the ticket was purchased. In the event that the 60th day falls on a Saturday, Sunday or legal holiday, a claimant may only redeem his prize-winning ticket for a free ticket at an on-line lottery retailer on or before the 60th day. Except for claims for free ticket prizes mailed to lottery headquarters and postmarked on or before the 60th day, claims for such prizes will not be accepted at lottery regional offices or headquarters after the 60th day. This section does not apply to the redemption of free tickets awarded through the subscription program. (see § 4.14)

D. In accordance with the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C.A. § 525), any person while in active military service may claim exemption from the 180-day ticket redemption requirement. Such person, however, must claim his winning ticket or share as soon as practicable and in no event later than 180 days after discharge from active military service.

§ 3.8. Using winners' names.

The department shall have the right to use the names of prize winners and the city, town or county in which they live. Photographs of prize winners may be used with the written permission of the winners. No additional consideration shall be paid by the department for this purpose unless authorized by the director.

§ 3.9. No prize paid to people under 18 *years of age* .

No prize shall be claimed by, redeemed from or paid to any individual under 18 years of age, and no prize shall be paid on a ticket purchased by or transferred to any person under 18 years of age. The transferee of any ticket to any person ineligible to purchase a ticket is ineligible to receive any prize. *Any cash prize or free ticket resulting from a ticket which is purchased by or claimed by a person ineligible to play the lottery game is invalid and cash prizes greater than $25 revert to the State Lottery Fund.*

§ 3.10. Where prizes claimed.

Winners may claim on-line game prizes from any licensed on-line retailer or the department in the manner specified in these regulations *or in game rules* . Licensed on-line retailers are authorized and required to make payment of all validated prizes of $600 or less.

§ 3.11. Validating winning tickets.

Winning tickets shall be validated by the retailer or the department as set out in these regulations and in any other manner which the director may prescribe in the specific rules for each type of on-line game.

§ 3.12. How prize claim entered.

A prize claim shall be entered in the name of an individual person or legal entity. If the prize claimed is $601 or greater, the person or entity also shall furnish a tax identification number.

A. An individual shall provide his social security number if a claim form is required by these regulations. A nonresident alien shall furnish their Immigration and Naturalization Service Number. This I.N.S. number begins with an A and is followed by numerical data.

B. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) issued by the Internal Revenue Service. If the department or these regulations require that a claim form be filed, the FEIN must be shown on the claim form.

C. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and the person(s) to whom winnings are taxable.

D. A group, family unit, club or other organization which is not a legal entity or which does not possess a FEIN and which does not file IRS Form 5754 with the department shall designate the individuals in whose names the claim shall be entered and those persons' social security numbers shall be furnished.

E. A group, family unit, club or other organization wishing to divide a jackpot prize shall complete an "Agreement to Share Ownership and Proceeds of Lottery Ticket" form. The filing of this form is an irrevocable election which may only be changed by an appropriate judicial order.

§ 3.13. Right to prize not assignable.

No right of any person to a prize shall be assignable, except that:

1. The director may pay any prize according to the terms of a deceased prize winner's beneficiary designation or similar form filed with the department or to the estate of a deceased prize winner who has not completed such a form, and

2. The prize to which a winner is entitled may be paid to another person pursuant to an appropriate judicial order.

§ 3.14. No accelerated payments.

The director shall not accelerate payment of a prize for any reason.

§ 3.15. Liability ends with prize payment.

All liability of the Commonwealth, its officials, officers and employees, and of the department, the board, the director and employees of the department, terminates upon final payment of a lottery prize.

§ 3.16. Delay of payment allowed.

The director may refrain from making payment of the prize pending a final determination by the director, under any of the following circumstances:

1. If a dispute occurs or it appears that a dispute may occur relative to any prize;

2. If there is any question regarding the identity of the claimant;

3. If there is any question regarding the validity of any ticket presented for payment; or

4. If the claim is subject to any set-off for delinquent debts owed to any agency eligible to participate in the ~~Set-Off~~ *Setoff* Debt Collection Act if the agency has

registered such debt with the Virginia Department of Taxation and timely notice of the debt has been furnished by the Virginia Department of Taxation to the State Lottery Department.

No liability for interest for any such delay shall accrue to the benefit of the claimant pending payment of the claim. The department is neither liable for nor has it any responsibility to resolve disputes between competing claimants.

§ 3.17. When installment prize payment may be delayed.

The director may, at any time, delay any installment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that has been brought to the department's attention. All delayed installments shall be brought up to date immediately upon the director's confirmation. Delayed installments shall continue to be paid according to the original payment schedule after the director's decision is given. No liability for interest for such delay shall accrue to the benefit of the claimant pending payment of the claim.

§ 3.18. Ticket is bearer instrument.

A ticket that has been legally issued by a licensed lottery retailer is a bearer instrument until the ticket has been signed. The person who signs the ticket is considered the bearer of the ticket.

§ 3.19. Payment made to bearer.

Payment of any prize will be made to the bearer of the validated winning ticket for that prize upon submission of a prize claim form, if one is required, unless otherwise delayed in accordance with these regulations. If a validated winning ticket has been signed, the bearer may be required to present proper identification.

§ 3.20. Marking tickets prohibited; exceptions.

Marking of tickets in any way is prohibited except by a player to claim a prize or by the department or a retailer to identify or to void the ticket.

§ 3.21. Penalty for counterfeit, forged or altered ticket.

Forging, altering or fraudulently making any lottery ticket or knowingly presenting a counterfeit, forged or altered ticket for prize payment or transferring such a ticket to another person to be presented for prize payment is a Class 6 felony in accordance with the state lottery law.

§ 3.22. Lost, stolen, destroyed tickets.

The department is not liable for lost, stolen or destroyed tickets.

The director may honor a prize claim of an apparent winner who does not possess the original ticket if the claimant is in possession of information which demonstrates that the original ticket meets the following criteria and can be validated through other means. The exception does not apply to an on-line game ticket the prize for which is a free ticket.

1. The claim form and a photocopy of the ticket, or photocopy of the original claim form and ticket, are timely filed with the department;

2. The prize for which the claim is filed is an unclaimed winning prize as verified in the department's records;

3. The prize has not been claimed within the required redemption period; and

4. The claim is filed within 180 days of the drawing or within the redemption period, as established by game rules.

§ 3.23. Retailer to pay all prizes of $600 or less.

Prizes of $600 or less shall be paid by any licensed on-line retailer, or by the department at the option of the ticket holder, or by the department when the ticket cannot be validated by the retailer.

§ 3.24. Retailers' prize payment procedures.

Procedures for prize payments by retailers are as follows:

1. Retailers may pay cash prizes in cash, by certified check, cashier's check, business check, or money order, or by any combination of these methods.

2. If a check for payment of a prize by a retailer to a claimant is denied for any reason, the retailer is subject to the same service charge for referring a debt to the department for collection and penalty payments that would apply if the check were made payable to the department. A claimant whose prize check is denied shall notify the department to obtain the prize.

3. Retailers shall pay claims for all prizes of $600 or less during all normal business hours of the lottery retailer when the on-line terminal is operational and the ticket claim can be validated.

4. Prize claims shall be payable only at the location specified on the license.

5. The department will reimburse a retailer for prizes paid up to 180 days after the drawing date.

6. In no case shall a retailer impose a fee, additional charge, discount for cashing a winning lottery instant

or on-line game ticket.

§ 3.25. When retailer cannot validate ticket.

If, for any reason, a retailer is unable to validate a prize winning ticket, the retailer shall provide the ticket holder with a department claim form and instruct the ticket holder on how to file a claim with the department.

§ 3.26. No reimbursement for retailer errors.

The department shall not reimburse retailers for prize claims a retailer has paid in error.

§ 3.27. Retailer to void winning ticket.

After a winning ticket is validated and signed by the ticket holder, the retailer shall physically void the ticket to prevent it from being redeemed more than once. The manner of voiding the ticket will be prescribed by the director.

§ 3.28. Prizes of $600 or less.

A retailer shall pay on-line prizes of $600 or less won on tickets validated and determined by the department to be official prize winners, regardless of where the tickets were sold. The retailer shall display special informational material provided by or approved by the department informing the public that the retailer pays all prizes of $600 or less.

§ 3.29. When prize shall be claimed from the department.

The department will process claims for payment of prizes in any of the following circumstances:

1. If a retailer cannot validate a claim which the retailer otherwise would pay, the ticket holder shall present the signed ticket and a completed claim form to the department regional office or mail both the signed ticket and a completed claim form to the department central office.

2. If a ticket holder is unable to return to any on-line retailer to claim a prize which the retailer otherwise would pay, the ticket holder may present the signed ticket at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

3. If the prize amount is $601 or more, the ticket holder may present the signed ticket and a completed claim form at any department regional office or mail both the signed ticket and a completed claim form to the department central office.

§ 3.30. Prizes of $25,000 or less.

~~Prizes~~ *Unless otherwise determined by the board, prizes* of $25,000 or less may be claimed from any of the department's regional offices. Regional offices will pay prizes by check after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.31. Prizes of more than $25,000.

Prizes of more than $25,000 and noncash prizes other than free lottery tickets may be claimed from the department's central office in Richmond. The central office will pay cash prizes by check, after tickets are validated and after any other applicable requirements contained in these regulations are met.

§ 3.32. Grand prize event.

If an on-line game includes a grand prize or jackpot event, the following general criteria shall be used:

1. Entrants in the event shall be selected from tickets which meet the criteria stated in specific game rules set by the director consistent with § ~~1.1~~ *§ 1.2* of these regulations.

2. Participation in the drawing(s) shall be limited to those tickets which are actually purchased by the entrants on or before the date announced by the director.

3. If, after the event is held, the director determines that a ticket should have been entered into the event, the director may place that ticket into a grand prize drawing for the next equivalent event. That action is the extent of the department's liability.

4. The director shall determine the date(s), time(s) and procedures for selecting grand prize winner(s) for each on-line game. The proceedings for selection of the winners shall be open to members of the news media and to either the general public or entrants or both.

§ 3.33. When prize payable over time.

A. Unless the rules for any specific on-line game provide otherwise, any cash prize of $100,001 or more will be paid in multiple payments over time. The schedule of payments shall be designed to pay the winner equal dollar amounts in each year, with the exception of the first, until the total payments equal the prize amount.

B. In case of a prize payable over time, if such prize is shared by two or more winning tickets, one or more of which are not claimed within the 180-day redemption period, the department will transfer that portion of the prize to the Literary Fund in accordance with procedures approved by the State Treasurer.

§ 3.34. Rounding total prize payment.

When a prize or share is to be paid over time, except

for the first payment, the director may round the actual amount of the prize or share to the nearest $1,000 to facilitate purchase of an appropriate funding mechanism.

§ 3.35. When prize payable for "life."

If a prize is advertised as payable for the life of the winner, only an individual may claim the prize. If a claim is filed on behalf of a group, company, corporation or any other type of organization, the life of the claim shall be 20 years.

§ 3.36. When ~~claims~~ *claim* form required.

A claim form for a winning ticket may be obtained from any department office or any licensed lottery retailer. A claim form shall be required to claim any prize from the department's central office. A claim form shall be required to claim any prize of $601 or more from the department's regional offices. This section ~~does~~ *may* not apply to the redemption of prizes awarded through a subscription plan as identified in § 4.14.

§ 3.37. Department action on claims for prizes submitted to department.

The department shall validate the winning ticket claim according to procedures contained in these regulations.

1. If the claim is not valid, the department will promptly notify the ticket holder.

2. If the claim is mailed to the department and the department validates the claim, a check for the prize amount will be mailed to the winner.

3. If an individual presents a claim to the department in person and the department validates the claim, a check for the prize amount will be presented to the bearer.

§ 3.38. Withholding, notification of prize payments.

A. When paying any prize of $601 or more, the department shall:

1. File the appropriate income reporting form(s) with the Virginia Department of Taxation and the Federal Internal Revenue Service; and

2. Withhold federal and state taxes from any winning ticket in excess of $5,001.

B. Additionally, when paying any prize of $101 or more, the department shall withhold any moneys due for delinquent debts listed with the Commonwealth's ~~Set-Off~~ *Setoff* Debt Collection ~~Program~~ *Act* .

§ 3.39. Director may postpone drawing.

The director may postpone any drawing to a certain time and publicize the postponement if he finds that the postponement will serve and protect the public interest.

PART IV.
SUBSCRIPTION PLAN.

§ 4.1. Development of subscription.

In addition to regulations set forth in this part, the conduct of subscriptions is subject to all applicable rules and regulations of the department.

§ 4.2. Subscriptions.

Subscriptions may be purchased for periods specified by the department in rules applicable to the lottery game to which the subscription applies.

§ 4.3. Subscription price.

The sale price of a subscription shall be determined by the board.

§ 4.4. Subscription cancellation.

A. A subscription entered into the department's central computer system cannot be cancelled by a subscriber or group-designated agent except when a subscriber or group-designated agent becomes employed by the lottery as an employee, board member, officer or employee of any vendor to the lottery of lottery on-line or instant ticket goods or services working directly with the department on a contract for such goods or services, or any person residing in the same household as any such board member, officer or employee during the subscription period.

B. A subscription cannot be assigned by a subscriber or group-designated agent to another person.

C. Funds remitted to the department as payment for the subscription are not refundable to the subscriber or group-designated agent unless provisions identified in subsection A of this section are present.

§ 4.5. Effective date.

The subscription shall be effective on the start date indicated in the confirmation notice for that subscription.

§ 4.6. Retailer compensation.

~~Active~~ *Unless otherwise determined by the board, active* licensed lottery retailers shall receive 5.0% compensation on sales of subscriptions. The compensation shall be based on all subscriptions purchased at any active licensed lottery retailer location as well as on all subscription applications mailed or delivered to the department's central office with payment and bearing a valid licensed lottery retailer number. In addition, active licensed lottery retailers shall be compensated for renewals of

subscriptions which originated at their retailer location. Retailer compensation for a subscription shall be cancelled in the event the tender for the subscription payment is not honored by the payor institution or if the licensed lottery retailer does not provide the retailer number.

§ 4.7. Validation requirements.

Only those subscriptions entered into the department's central computer system and which are confirmed are valid entries eligible for prizes. Otherwise, game numbers selected on a subscription application are not eligible to win a prize in any drawing.

§ 4.8. Purchase of subscription.

A. Subscription applications may be distributed through the department's central office, any department regional office, any licensed lottery retailer, or any other means as determined by the department.

B. An individual, group, family unit, club, or other organization otherwise eligible to purchase lottery tickets may purchase a subscription by mail from the department's central office or from other locations as determined by the department.

C. In order to purchase a subscription, an individual, group, family unit, club, or other organization must furnish a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations.

D. After receipt of the subscription at the department's central office, the subsequent entry of data into the central computer system, and the bank clearance of the subscriber's method of payment, the department shall mail a confirmation notice to the subscriber or group-designated agent at the address provided on the subscription application.

§ 4.9. Subscription application requirements.

A. A subscription application must meet the following requirements in order to be accepted for entry:

1. The numbers selected by the player must contain the prescribed number of unduplicated game numbers from numbers available for play in the game. If permitted by the rules of the game, numbers may be duplicated;

2. The subscription application must contain a valid Virginia street address or Virginia post office box, as required by U.S. postal regulations;

3. If a subscription is entered for a group, corporation, family unit or club, one individual must be designated as the group agent;

4. The subscription application must be an official department application; and

5. The designated numbers selected by the player or group-designated agent for a subscription shall remain unchanged for the duration of the subscription once the designated numbers are entered into the department's central computer system and confirmed by the player. If any easy pick option is selected by the player, the randomly-selected numbers shall remain unchanged for the duration of the subscription.

B. A subscription application will be rejected for any of the following reasons:

1. If a subscription application is received by the department on an unofficial subscription form;

2. If no numbers are designated in a selected game panel and an available easy pick option is not selected;

3. If more or fewer than the prescribed set of numbers are selected;

4. If numbers are duplicated within the game panel, unless permitted by game rules;

5. If both a prescribed set of numbers and easy pick is designated in the same game panel;

6. If payment is not for the correct amount and is not made payable to the "Virginia Lottery," if a check or money order is returned unpaid, if a third-party check is remitted for payment, or if remittance is dishonored, the registration and the confirmation notice are void automatically for all drawings including those which may have occurred prior to the remittance being dishonored;

7. If the application contains an out-of-state address;

8. If the application is not signed;

9. If an individual (subscriber, group-designated agent or recipient) is under the age of 18, according to birth date recorded on the application; or

10. If an individual is found to be a Virginia Lottery Department employee, vendor employee, or household member, otherwise prohibited from playing any lottery game.

C. If the subscription is rejected by the department, both the subscription application and subscription payment will be returned to the subscriber or group-designated agent with a letter of explanation and no prize will be paid on any play appearing on the rejected subscription application for any drawing deriving from that subscription application.

These regulations assume that an easy pick option is available. If not available in a subscription plan, the criteria for accepting or rejecting a subscription

application is modified accordingly.

§ 4.10. Subscription gifts.

A. Any recipient of a subscription gift must have a valid Virginia address or Virginia post office box.

B. Numbers selected by the subscriber for the recipient cannot be cancelled or reselected.

C. All other provisions of these regulations shall apply to subscription gifts, subscription purchasers and subscription recipients.

§ 4.11. Subscription renewals.

A. Approximately six weeks prior to the end of a subscription, a renewal notice will be mailed to a subscriber or group-designated agent at the address on file with the department. Subscribers or group-designated agents may renew the subscription by returning the renewal notice with payment to the department's central office. Renewal notices may be obtained from the department's central office or other locations as determined by the lottery. Renewal notices shall not be mailed to subscribers or group-designated agents who no longer have a valid Virginia address or Virginia post office box.

B. Renewals will not be accepted unless the individual subscriber or group-designated agent furnishes a valid Virginia address or Virginia post office box.

§ 4.12. Change of name.

In the event a subscriber or group-designated agent's name changes during the subscription period, he may notify the department in writing of such change. Proof of name change may be required by the department at any time. The department reserves the right to refuse to change a name registered as a subscriber.

§ 4.13. Change of address.

In the event a subscriber or group-designated agent moves out of state during the subscription period and notifies the department of the change of address, the subscription will remain in effect until the number of draws for that subscription plan has expired. The subscriber or group-designated agent will not be eligible to receive a subscription renewal notice.

§ 4.14. Payment of prizes.

A. Before any prize of $601 or greater can be paid, the department must be provided with the subscriber's taxpayer identification number, if it has not already been provided on the subscription application. The department will make reasonable efforts to obtain the missing taxpayer identification number. Payment will be delayed until the number is provided. Prizes for which no taxpayer identification number has been furnished within 180 days of the date of the drawing in which the prize was won will be forfeited.

B. ~~The~~ *Unless otherwise determined by the board, the* department will monitor subscriptions and mail nonannuitized prize payments to subscription winners without the necessity of a claim form being filed by the subscription winners. Prizes shall be subject to payment of any taxes and ~~Set Off~~ *Setoff* Debt Collection Act amounts due and the department shall deduct applicable taxes and ~~set off~~ *set off* debt amounts prior to mailing prize payments.

C. Subscribers winning a free play will receive a check as payment of free ticket prize(s) from the department at the end of their subscription(s). In lieu of awarding free tickets to a subscriber or group-designated agent, the check will pay the cumulative value of all free tickets won during the subscription plan. The value of free play tickets won on a subscription shall be the same as the purchase price for a single-play, on-line ticket in the same game as determined by the board.

D. The department will notify subscription winners of annuitized prizes by certified mail or telephone, at the address or telephone number shown on the subscription application on file with the department, and request that they come to the department's central office to receive the first prize payment. Subsequent checks will be mailed to subscription winners. Claim forms for annuitized prizes will not be required.

E. Prize payments will be processed in the name of an individual or group-designated agent according to information furnished on the subscription application.

1. A group, family unit, club or other organization which is not a legal entity or which does not possess a Federal Employer's Identification Number (FEIN) may file Internal Revenue Service (IRS) Form 5754, "Statement by Person(s) Receiving Gambling Winnings," with the department. This form designates to whom winnings are to be paid and are taxable.

2. If the prize winner does not furnish a social security number or taxpayer identification number, the prize will be deemed unclaimed and the department will not pay the prize. Failure to furnish the social security number or taxpayer identification number may expose the prize winner(s) to the risk that the prize will remain unclaimed after 180 days from the date of the drawing and will be forfeited.

F. If for any reason a payment is returned by the U.S. Postal Service and a new address cannot be located, such payments will be held by the department under the state's unclaimed property laws and transferred to the state if not claimed within 180 days following the drawing. Thereafter the department shall not be liable for payment and winners who make claims after this time period will be

referred to the Unclaimed Property Division, Virginia Department of the Treasury.

G. Any subscription cash prize which remains unclaimed for any reason other than the preceding subsection after 180 days following the drawing which determined the prize shall revert to the State Literary Fund. This includes, but is not limited to, failure or refusal to furnish a taxpayer identification number to complete the claim for a prize won.

§ 4.15. Player responsibility.

A. The department is not liable for department or licensed lottery retailer employee errors.

B. The player(s) assumes responsibility for any delays resulting from the choice of method of forwarding a subscription application to the department.

C. The subscriber or group-designated agent is responsible for verifying the accuracy of the lottery game data as recorded on the confirmation notice mailed to the subscriber or group-designated agent by the department.

D. The player shall notify the department if an error has been made. Notification shall be postmarked within 10 business days of date of the confirmation notice.

E. Player-requested corrections are not effective until entry of the corrected data into the department's central computer system and a corrected confirmation notice is mailed to the subscriber by the department. Such corrections are not retroactive. Any errors in lottery game data remain valid for all drawings occurring while the erroneous data remains effective but such erroneous game data is no longer valid for drawings occurring after the erroneous data is corrected and a corrected confirmation notice is issued.

§ 4.16. Department responsibility.

A. The department is responsible for entering the subscription data, including authorized corrections, on the department's central computer system within a reasonable period of time from receipt of the subscription application and clearance of remittance or receipt of the Request for Corrections notice.

B. If for any reason a subscription play is not accepted, the liability of the department and its retailers is limited to a refund of the purchase price for that play.

§ 4.17. Disputes.

A. The department is neither liable for nor has it any responsibility to resolve disputes among group members for group subscriptions.

B. The decision of the director shall be final.

NOTICE: The forms used in administering the State Lottery Department On-Line Game Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the State Lottery Department, 2201 West Broad Street, Richmond, Virginia 23220, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

On-Line Game Survey (SLD-120)
Retailer Data Collection
Lottery Retailer Surety Bond
Retailer Agreement - Lion III or Self-Serve Terminal(s) (SLD-0064 (10/92)
Virginia Lottery Licensed Retailer Certificate (4/90)
Things to Do
Commonwealth of Virginia Lottery Bond Application
Special Notice on Bonding for Lottery Retailers
Virginia Lottery On-Line Play Center; Agreement/Order Form (SLD-0136, 4/89)
Authorization Agreement for Preauthorized Payments (SLD-0035A)
On-Line Ticket Stock Return (X-0120, 6/89)
On-Line Weekly Settlement Envelope (SLD-0127)
Weekly Settlement Form
A/R Online Accounting Transaction Form (X-0105, 6/89)
Cash Tickets Envelope/Cancelled Tickets Envelope
Ticket Problem Report
Winner Claim Form (SLD-0007, 3/89)
Winner-Gram
We're Sorry But ...
Subscription Playslip
Subscription Application
Confirmation Letter
Statement by Person(s) Receiving Gambling Winnings (Form 5754)
Report of Cash Payments Over $10,000 Received in a Trade or Business (Form 8300, 3/92)
Agreement to Share Ownership and Proceeds of Lottery Ticket

VA.R. Doc. No. R94-141; Filed October 27, 1993, 9:10 a.m.

FINAL REGULATIONS

MARINE RESOURCES COMMISSION

NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating regulations. However, the Commission is required to publish the full text of final regulations.

Title of Regulation: **VR 450-01-0035. Pertaining to the Culling of Oysters.**

Statutory Authority: §§ 28.2-201, 28.2-507, 28.2-511, and 28.2-513 of the Code of Virginia.

Effective Date: October 15, 1993.

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in ~~§§ 28.1-23, 28.1-85 and 28.1-127~~ *§§ 28.2-201, 28.2-507, 28.2-511, and 28.2-513* of the Code of Virginia.

B. This regulation amends previous regulation VR 450-01-0035 which was promulgated by the Marine Resources Commission and made effective ~~March 9, 1987~~ *September 1, 1987* .

C. The effective date of this regulation is ~~September 1, 1987~~ *October 15, 1993* .

§ 2. Purpose.

The purpose of this regulation is to establish culling requirements (minimum size limit) and inspection procedures which will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

§ 3. Definitions.

A. Clean cull areas: All natural public oyster beds, rocks, or shoals in the tidal water of Virginia, except those designated by the Marine Resources Commission as seed areas, shall be considered clean cull areas.

B. Seed areas: All natural public oyster beds, rocks, or shoals designated for the harvest of seed oysters, as follows:

1. Seaside of Eastern Shore. All of the public oyster grounds on the eastern side of Accomac and Northhampton counties on Virginia's Eastern Shore.

2. James River. All of the public oyster grounds in the James River and its tributaries above a line drawn from Cooper's Creek in Isle of Wight County on the south side of the James River to a line in a northeasterly direction across the James River to the Newport News municipal water tank located on Warwick Boulevard between 59th ~~Street~~ and 60th ~~Street~~ *Streets* in the City of Newport News, excluding the ~~clean cull area at the Southwest corner of Jail Island as described in VMRC Order 82-8~~ *Jail Island Clean Cull area as described in VMRC Orders 450-01-8208 and 450-01-8807* .

§ 4. Minimum ~~("cull")~~ *cull* size.

In order to encourage a continued supply of marketable oysters minimum size limits are hearby established. Undersized oysters and/or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidently retained during culling are found in § 5 of this regulation.

A. Oysters taken from clean cull areas shall not have shells less than three inches in length.

B. In the seed area, there shall be no size limit, except as restricted in § ~~4(c)~~ *subsections C and D of this section* .

C. In the James River seed area, the shells of oysters marketed for direct consumption shall not be less than 2-1/2 inches in length. (Oysters marketed as seed oysters shall have no size limit.)

D. On the Seaside of Eastern Shore seed area, the shells of oysters marketed for direct consumption shall not be less than three inches in length. (Oysters marketed as seed oysters shall have no size limit).

§ 5. Culling tolerances or standards.

A. In the clean cull areas, if more than one four quart measure of undersized oysters or shells is found per bushel inspected it shall constitute a violation of this regulation.

B. In the seed areas ~~, except the James River Seed Area,~~ if more than one six quart measure of shells is found per bushel *of seed oysters* inspected it shall constitute a violation of this regulation.

C. In the James River seed area, if more than one four quart measure of undersized (less than 2-1/2 inches) oysters and shell is found per bushel ~~inspected~~ of oysters *to be* marketed for direct consumption, ~~or if more than one 10 quart measure of shell is found per bushel inspected of seed oysters~~ it shall constitute a violation of this regulation.

D. On the Seaside of Eastern Shore seed areas, if more than one four quart measure of undersized (less than 3 inches) oysters and shell is found per bushel oysters to be marketed for direct consumption, it shall constitute a

violation of this regulation.

§ 6. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board and culled by hand to the inside open part of the boat in a loose pile; however, when oysters are taken by hand and held in baskets or other containers they shall be culled as taken and transferred from the container to the inside open part of the boat in a loose pile and subject to inspection by any Marine Resources Commission law-enforcement officer.

B. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this regulation.

C. It shall be unlawful for any harvester to store oysters taken from public grounds on any boat in any type of container. All oysters taken from said areas shall be sold or purchased only in the regular oyster one-half bushel or one bushel measure as described in § ~~28.1-136~~ *§ 28.2-526* of the Code of Virginia *, except that on the Seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction .*

D. In the inspection of oysters the law-enforcement officer shall, with a shovel, take at least one bushel of oysters at random, provided that the entire bushel shall be taken at one place in the open pile of oysters.

§ 7. Penalty.

As set forth in § ~~28.1-23~~ *§§ 28.2-201 and 28.2-511* of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class ~~1~~ *3* misdemeanor.

/s/ William A. Pruitt
Commissioner
October 20, 1993.

VA.R. Doc. No. R94-104; Filed October 21, 1993, 12:30 p.m.

* * * * * * * *

Title of Regulation: **VR 450-01-0095. Restrictions on Oyster Harvest in Virginia.**

Statutory Authority: §§ 28.2-201 and 28.2-507 of the Code of Virginia.

Effective Date: October 1, 1993.

Preamble:

This regulation establishes restrictions on the harvest of oysters from all public oyster grounds in the Chesapeake Bay and its tributaries and on all oyster grounds on the Seaside of Eastern Shore.

VR 450-01-0095. Restrictions on Oyster Harvest in Virginia.

§ 1. Authority and effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201 and 28.1-507 of the Code of Virginia.

B. Other restrictions on oyster harvesting may be found in Chapter 5 (§ 28.2-500 et seq.) of Title 28.2 of the Code of Virginia and in VR 450-01-0008, VR 450-01-0022, VR 450-01-0026, VR 450-01-0027, VR 450-01-0035, VR 450-01-0038, VR 450-01-0085, and VR 450-01-0086.

C. The effective date of this regulation is October 1, 1993.

§ 2. Purpose.

The purpose of this regulation is to protect and conserve Virginia's oyster resource which has been depleted by disease, harvesting, and natural disasters.

§ 3. Open season.

The lawful seasons for the harvest of oysters from the public oyster rocks, beds and shoals in the following areas are:

1. Chesapeake Bay and its tributaries:

Seed areas - October 15, 1993, through December 31, 1993;

Clean cull areas - October 15, 1993, through December 31, 1993.

2. Seaside of Eastern Shore: October 1, 1993, through March 31, 1994.

§ 4. Closed harvest season.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds in the Chesapeake Bay and its tributaries: January 1, 1994, through September 30, 1994.

2. All oyster grounds on the Seaside of Eastern Shore: April 1, 1994, through September 30, 1994. Oyster harvest from leased oyster ground and fee simple oyster ground shall require a permit from the commission as set forth in § 9 of this regulation.

§ 5. Time limit.

Harvest on public grounds in the Chesapeake Bay and its tributaries shall be from sunrise to noon. It shall be

unlawful for any person to harvest oysters from the public grounds in the Chesapeake Bay and its tributaries prior to sunrise or after noon of each day.

§ 6. Gear restrictions.

It shall be unlawful for any person to harvest oysters from public oyster grounds with shaft tongs longer than 18 feet in total overall length.

§ 7. Quotas.

In the James River there shall be an oyster harvest quota of 6,000 bushels for clean cull oysters measuring 2-1/2 inches or larger. It shall be unlawful for any person to harvest clean cull oysters from the James River after the 6,000 bushel quota has been reached.

§ 8. Quota monitoring.

On the James River, all oyster harvesters shall check in daily with a Marine Patrol Officer stationed at either Point of Shoals or Horsehead Rocks prior to harvest. All harvesters shall check out by 1 p.m. prior to offloading of the daily catch.

§ 9. Harvest permit required.

A. It shall be unlawful for any person to harvest, or attempt to harvest, oysters from leased oyster ground or fee simple ground on the Seaside of Eastern Shore without first obtaining a permit from the Marine Resources Commission.

B. Applicants for the permit shall have paid all rent fees and shall specify the location of the lease or fee simple ground to be harvested and shall verity that the ground is properly marked as specified by VR 450-01-0038.

C. No person shall hold more than two permits at any time.

§ 10. Penalty.

As set forth in § 28.2-201 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor. In addition to the penalties prescribed by law, any person violating the provisions of § 9 of this regulation shall return all oysters harvested to the water, shall cease harvesting on that day, and all harvesting apparatus shall be subject to seizure.

/s/ William A. Pruitt
Commissioner
October 14, 1993.

VA.R. Doc. No. R94-103; Filed October 21, 1993, 12:30 p.m.

EMERGENCY REGULATION

Title of Regulation: **VR 450-01-0094. Pertaining to Summer Flounder.**

Statutory Authority: § 28.2-210 of the Code of Virginia.

Effective Date: October 1, 1993, to October 30, 1993.

Preamble:

This emergency regulation modifies the summer flounder commercial harvest quota established by VR 450-01-0081 for the period October 1, 1993, through December 31, 1993.

VR 450-01-0094. Pertaining to Summer Flounder.

§ 1. Authority, prior regulation, effective date, termination date.

A. This emergency regulation is promulgated pursuant to the authority contained in § 28.2-210 of the Code of Virginia.

B. VR 450-01-0081, "Pertaining to Summer Flounder" establishes harvest quotas, trip limits, minimum size limits and daily bag limits and is hereby amended by this emergency regulation.

C. The effective date of this emergency regulation is October 1, 1993.

D. This emergency regulation shall terminate on October 30, 1993.

§ 2. Purpose.

The purpose of this regulation is to adjust the fourth quarter commercial harvest quota for summer flounder by shifting unharvested inshore quota to the offshore quota and by adding transfers of quota from other Atlantic Coast states.

§ 3. Commercial harvest quotas.

A. The commercial harvest of summer flounder from Virginia tidal waters for the period of January 1, 1993, through December 31, 1993, shall be limited to 161,442 pounds.

B. During the period of October 1, 1993, through December 31, 1993, landings of summer flounder harvested outside of Virginia waters shall be limited to 545,423 pounds plus any transfers of summer flounder quota from any other Atlantic Coast state as authorized by the provisions of the Summer Flounder Fishery Management Plan, Amendment 4.

/s/ William R. Pruitt
Commissioner

VA.R. Doc. No. R94-96; Filed October 19, 1993, 2:06 p.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF GENERAL SERVICES

Title of Regulation: **VR 330-02-06. Regulations for the Certification of Laboratories Analyzing Drinking Water (REPEAL).**

Title of Regulation: **VR 330-02-06:1. Regulations for the Certification of Laboratories Analyzing Drinking Water.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. I recommend that the Department of General Services include a rule which states the fee which it will charge for certification. Also, I recommend that the agency consider the suggestions made by the Department of Planning and Budget to clarify language in the proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: October 18, 1993

VA.R. Doc. No. R94-98; Filed October 19, 1993, 2:10 p.m.

BOARD OF MEDICINE

Title of Regulation: **VR 465-03-01. Regulations Governing the Practice of Physical Therapy.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: October 18, 1993

VA.R. Doc. No. R94-97; Filed October 19, 1993, 2:10 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

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

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

Governor's Comment:

I do not object to the promulgation of the regulations as proposed. However, I reserve the right to comment on the final package once comments from public hearings and others have been received.

/s/ Lawrence Douglas Wilder
Governor
Date: October 21, 1993

VA.R. Doc. No. R94-111; Filed October 26, 1993, 8:56 a.m.

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

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. If you FAX your notice, two copies of the FAX are required. 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

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-1. Virginia Board of Pharmacy Regulations.**

Publication Date: 10:1 VA.R. 97-124 October 4, 1993.

Correction to Final Regulation:

Page 98, § 1.1. Public Participation Guidelines, should be shown as follows:

~~PART I.~~
~~GENERAL PROVISIONS.~~

§ ~~1.1. Public participation guidelines.~~

~~A. Mailing list.~~

~~The executive director of the board will maintain a list of persons and organizations who will be mailed the following documents:~~

~~1. "Notice of intent" to promulgate regulations.~~

~~2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.~~

~~3. Final regulation adopted.~~

~~B. Being placed on list: deletion.~~

~~Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board may, in its discretion, 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 subsection A of this section. Those on the list may be periodically requested to indicate their desires to continue to receive documents or to be deleted from the list. After 30 days, the names of the persons who do not respond will be deleted from the list.~~

~~C. Notice of intent.~~

~~At least 30 days prior to the publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.~~

~~D. Informational proceedings or public hearings for existing rules.~~

~~At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulation. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceeding may be held separately or in conjunction with other informational proceedings.~~

~~E. Petition for rulemaking.~~

~~Any person may petition the board to adopt, amend, or delete any regulation. Any petition received in a timely manner shall appear on the next agenda of the board. The board shall have sole authority to dispose of the petition.~~

~~F. Notice of formulation and adoption.~~

~~At any meeting of the board or subcommittee of the board at which the formulation or adoption of regulations is to occur, the subject matter shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.~~

~~G. Advisory committees.~~

~~The board may appoint advisory committees as it may deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.~~

The Public Participation Guidelines for the Virginia Board of Pharmacy are in VR 530-01-3. (Adopted as Emergency Regulations on June 8, 1993, and filed with the Registrar of Regulations on June 28, 1993.)

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

† **January 15, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to **repeal** regulations entitled: **VR 105-01-1. Public Participation Guidelines,** and **adopt** regulations entitled: **VR 105-01-1:1. Public Participation Guidelines.** The proposed guidelines will set procedures for the Board for Accountancy to follow to inform and incorporate public participation when promulgating regulations.

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

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

Virginia Department For The Aging

DEPARTMENT FOR THE AGING

Long-Term Care Ombudsman Program Advisory Council

† **December 7, 1993 - 9:30 a.m.** – Open Meeting
Virginia Association of Homes for Adults, Inc., United Way Building, 224 West Broad Street, Suite 101, 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, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2271, toll-free 1-800-552-3402 or (804) 225-2271/TDD ☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† **December 7, 1993 - 1 p.m.** – Public Hearing
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia.

† **January 18, 1994** – Written comments may be submitted until 9 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to **repeal** regulations entitled: **VR 115-01-01. Guidelines for Public Participation,** and **adopt** regulations entitled **VR 115-01-01:1. Public Participation Guidelines.** Public Participation Guidelines are regulations, mandated by § 9-6.14:7.1 of the Code of Virginia, that govern how the agency will involve the public in the making of the regulations. The purpose of the proposed regulation is to review for effectiveness and continued need an emergency regulation that will be in effect only through June 10, 1994. The proposed regulation is for the purpose of providing a permanent regulation to supersede the emergency regulation.

The proposed regulation governs regulation-making entities under the aegis of the Department of Agriculture and Consumer Services (with the exception of the Pesticide Control Board, which has adopted its own public participation guidelines), and the Virginia Agricultural Development Authority.

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

Contact: L. H. Redford, Regulatory Coordinator, 1100 Bank

Street, P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-3539.

Pesticide Control Board

† **January 15, 1994 - 9 a.m.** – Public Hearing
Department of Agriculture and Consumer Services, 1100 Bank Street, Room 204, Richmond, Virginia.

† **January 17, 1994** – 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 Pesticide Control Board intends to amend regulations entitled: **VR 115-04-21. Public Participation Guidelines.** The purpose of the proposed action is to review regulations for effectiveness and continued need to include allowing the public to request the use of an "advisor" and to ensure that the public may request changes to these regulations and receive consideration and response from the board. Also, provisions by which the board will appoint the "advisor" are established.

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

Contact: Marvin A. Lawson, Ph.D., Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, 1100 Bank St., P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

STATE AIR POLLUTION CONTROL BOARD

November 17, 1993 - 10:30 a.m. – Public Hearing
Pohick Regional Public Library, 6450 Sydenstricker Road, Burke, Virginia.

December 3, 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 and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-99-03. Regulation for the Control of Motor Vehicle Emissions.** The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

The 1990 Clean Air Act amendments require that the Northern Virginia vehicle emissions testing program be upgraded from a "basic" program, which tests vehicle exhaust emissions at idle speed, to an "enhanced" program, which tests exhaust emissions from most vehicles during a simulated driving cycle and also tests for excessive fuel evaporation.

The regulation defines affected motor vehicles and requires that they be presented to a test-only emissions inspection station biennially to receive a test based on vehicle model year and weight class. Information regarding the vehicle's performance on the test is given to the motorist and a pass, fail, waiver or rejection signal is electronically stored for the purpose of enforcement through registration. The inspection may cost the motorist up to $20 and there is an administrative fee of $2 per vehicle, per year of registration, due at the time of registration. This will, in most cases, be collected by the Department of Motor Vehicles and deposited into a fund for the purpose of funding the state oversight costs of this program.

Cars and trucks weighing less than 8,500 pounds, of model years 1968 and newer, will be subject to the "high-tech" exhaust emissions inspection, called IM240, which tests cars in a simulated driving cycle. All but the 1968-70 model years will also get a test of the vehicle's fuel vapor recovery system and of the fuel supply system to detect evaporative leaks. Heavier trucks will get a test of the exhaust emissions at idle and with the engine running at 2,500 RPM, called a "two-speed idle test." In addition to vehicles registered in the area defined by the law, vehicles not registered but operated regularly in the program area, such as on federal installations, will also be subject to testing, regardless of where they are registered. State and local government vehicles are also included.

The test is valid for two years no matter how may times the vehicle is bought or sold. If a motorist wishes to request a waiver of the test, he must spend at least $450 on emissions-related repairs. The cost amount is adjusted each January by applying the Consumer Price Index released the previous fall by the federal government. The waiver is also valid for two years.

Random testing of vehicles is required and will be accomplished using either roadside pullovers for an idle test or a remote sensing device next to the roadway.

The regulation defines conditions under which an inspection station may be granted a permit and emissions inspectors may be granted a license. Certain conditions for consumer protection, such as location of stations, parameters for determining the number of inspection stations, and motorist waiting time are included in the regulation.

Comparison with federal requirements: The following provisions of the regulation are more stringent than federal requirements:

1. Coverage is extended from the nonattainment area to include Fauquier County based on the requirement in the state statute.

2. Consumer protection requirements regarding the

location of inspection stations, the number of inspection lanes, and the hours of operation provide parameters for these aspects of the program, based on requirements in the state statute, which are not requirements of the federal regulation.

3. Manufacturers or distributors of emissions testing equipment are prohibited from owning or operating emissions inspection stations by statute.

4. The federal requirement for this program is that a calculated reduction in certain emissions, in grams of emissions per vehicle mile traveled, be met through a program based on a model program developed by EPA. Some aspects of a state's program may match the model program, some may be less stringent, and some may be more stringent. Aspects of greater stringency must make up for those aspects which are less stringent.

EPA's model program, i.e. the performance standard, includes:

Network type: Centralized

Start date: January 1, 1995

Test frequency: Annual testing

Model year coverage: 1968 and lower

Vehicle type coverage: Light duty vehicles and light duty trucks rated up to 8,500 pounds GVWR

Transient, mass-emissions test (IM240): 1986 and newer vehicles

Two-speed test, no resistance load: 1981-1985 vehicles

Idle test: 1980 and older

Virginia's proposed program, designed to meet the performance standard, includes these variations on the model program:

Test frequency: Biennial testing

Vehicle type coverage: Vehicles rated up to 26,000 pounds GVWR, with exceptions for diesels, motorcycles, and antique vehicles

Transient, mass-emissions test (IM240): 1968 and newer light duty vehicles and trucks up to 8,500 pounds GVWR

Two-speed test, no resistance load: 1968 and newer heavy duty vehicles and trucks up to 26,000 pounds GVWR

The following provision of the regulation is less stringent than federal requirements:

Used vehicles held in a motor vehicle dealer's inventory for resale may be registered for one year without an emissions inspection provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale. This deferment is based on a requirement in the state statute.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the office of the Air Programs Section, 9th Street Office Building, 8th Floor, 200-202 North 9th Street, Richmond, Virginia, and at the office of the Mobile Sources Section, Department of Environmental Quality, 7240-D Telegraph Square Drive, Lorton, Virginia, telephone (703) 339-8553, between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

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

Written comments may be submitted through December 3, 1993, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240.

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

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† **December 14, 1993 - 7 p.m.** – Information Session
† **December 14, 1993 - 8 p.m.** – Public Hearing
Osborn High School Lecture Room, 9005 Tudor Lane, Manassas, Virginia.

† **December 15, 1993 - 7 p.m.** – Information Session
† **December 15, 1993 - 8 p.m.** – Public Hearing
Millington Auditorium, College of William and Mary, Williamsburg, Virginia.

† **December 16, 1993 - 7 p.m.** – Information Session
† **December 16, 1993 - 8 p.m.** – Public Hearing
Whitman Auditorium, Virginia Western Community College, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

† **January 17, 1994** – 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 Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision HH – Standards of Performance for Regulated Medical Waste Incinerators, Rule 5-6).** The regulation amendments concern provisions covering standards of performance for regulated medical waste incinerators. The proposal will require owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. This will be accomplished through the establishment of emissions limits and process parameters based on control technology, ambient limits to address health impacts, and monitoring, testing, and recordkeeping to assure compliance with the limits.

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

Written comments may be submitted until the close of business January 17, 1994, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

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

ALCOHOLIC BEVERAGE CONTROL BOARD

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.

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December 17, 1993 – Written comments may be submitted through this date.

December 20, 1993 - 10 a.m. – Public Hearing
Department of Alcoholic Beverage Control, 2901 Hermitage Road, 1st Floor Hearing Room, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Alcoholic Beverage Control Board intends to amend regulations entitled: **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; VR 125-01-2. Advertising; VR 125-01-3. Tied-House; VR 125-01-4. Requirements for Product Approval; VR 125-01-5. Retail Operations; VR 125-01-6. Manufacturers and Wholesalers Operations; and VR 125-01-7. Other Provisions.** The proposed amendments to the regulations relate to (i) recodification of Title 4 into new Title 4.1; (ii) informal conferences; (iii) agency representation; (iv) public participation guidelines; (v) allowing manufacturers, bottlers and wholesalers to supply retailers with inflatables and spirits back-bar pedestals; (vi) off-site directional signs for farm wineries and wineries holding retail off-premises winery licenses; (vii) increasing the record retention period from two to three years for licensees and permittees; (viii) prohibiting manufacturers, bottlers and wholesalers from providing customized advertising materials to retail licensees; (ix) wine coolers; (x) when and under what circumstances special agents and other law-enforcement officers shall have access to licensed retail establishments; (xi) the definition of "reasonable hours"; (xii) requiring wine and beer and beer only restaurants to sell meals or other food at substantially all hours that wine and beer are offered for sale; (xiii) the form, content and retention of records and accounts required to be kept by licensees; (xiv) waiver of the banquet license tax for not-for-profit corporations or associations holding nonprofit events; and (xv) grain alcohol permits.

Statutory Authority: §§ 4.1-103, 4.1-111, 4.1-113, 4.1-204, 4.1-320, 4.1-329, 9-6.14:7.1 and 9-6.14:11 of the Code of Virginia.

Contact: Robert N. Swinson, Secretary to the Board, P.O. Box 27491, Richmond, VA 23261-7491, telephone (804) 367-0616.

BOARD FOR ARCHITECTS

† **November 18, 1993 - 9 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia.

A meeting to (i) approve minutes from September 2, 1993, meeting; (ii) review correspondence; (iii) review investigative files; and (iv) review applications.

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

VIRGINIA ASBESTOS LICENSING BOARD

December 20, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the Virginia Asbestos Licensing Board intends to adopt regulations entitled: **VR 137-01-1. Public Participation Guidelines.** The proposed guidelines will set procedures for the Virginia Asbestos Licensing Board to follow to inform and incorporate public participation when promulgating asbestos licensing regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8588.

AUCTIONEERS BOARD

December 7, 1993 - 2 p.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

An open 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, telephone (804) 367-8534.

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† **January 15, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Auctioneers intends to **repeal** regulations entitled: **VR 150-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 150-01-1:1. Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 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.

Statutory Authority: §§ 9-6.14:7.1, 54.1-602 and 54.1-201 of the Code of Virginia.

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

BOARD FOR BARBERS

† **January 15, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Barbers intends to **repeal** regulations entitled: **VR 170-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 170-01-00:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Board for Barbers to follow to inform and incorporate public participation when promulgating regulations.

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

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

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

December 2, 1993 - 10 a.m. – Open Meeting
State Capitol, Senate Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by November 23 from the Chesapeake Bay Local Assistance Department.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD

Central Area Review Committee

November 17, 1993 - 10 a.m. – Open Meeting
December 15, 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 or toll-free 1-800-243-7229/TDD

Northern Area Review Committee

November 16, 1993 - 2 p.m. – Open Meeting
December 14, 1993 - 2 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 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 or toll-free 1-800-243-7229/TDD ☎

Southern Area Review Committee

November 17, 1993 - 2 p.m. – Open Meeting
December 15, 1993 - 2 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 or toll-free 1-800-243-7229/TDD ☎

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Coordinating Committee

November 19, 1993 - 8:30 a.m. – Open Meeting
December 17, 1993 - 8:30 a.m. – Open Meeting
Office of Coordinator, Interdepartmental Regulation, 730 East Broad Street, Theater Row Building, Richmond, Virginia. ♿

A regularly scheduled meeting to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE BOARD FOR COMMUNITY COLLEGES

† **November 17, 1993 - 1 p.m.** – Open Meeting
November 17, 1993 - 2:30 p.m. – Open Meeting
Central Virginia Community College, 3506 Wards Road, Lynchburg, Virginia.

State Board committee meetings will be held.

November 18, 1993 - 9 a.m. – Open Meeting
Lynchburg Hilton, 2900 Candlers Mountain Road, Lynchburg, Virginia.

A regularly scheduled meeting.

Contact: Joy Graham, Assistant Chancellor, Public Affairs, Virginia Community College System, 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

COMPENSATION BOARD

November 24, 1993 - 1 p.m. – Open Meeting
December 22, 1993 - Noon – Open Meeting
9th Street Office Building, 202 North 9th Street, Room 913/913A, 9th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A routine meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 3-F, Richmond, VA 23206-0686, telephone (804) 786-3886 or (804) 786-3886/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

† **November 18, 1993 - 7 p.m.** – Open Meeting
Courthouse, Lancaster County, Virginia. ♿ (Interpreter for the deaf provided upon request)

A public meeting to present Belle Isle State Park "Draft" Master Plan for consideration and comments.

Contact: Gary Waugh, Public Relation Manager, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-5045 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

Recovery Fund Committee

† **December 8, 1993 - 9 a.m.** – Open Meeting
3600 West Broad Street, Richmond, Virginia. ♿

A meeting to consider claims filed against Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session.

Contact: Holly Erickson, Assistant Administrator Recovery

Fund, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† **November 17, 1993 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. 🗟

A meeting to discuss matters as presented.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

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† **January 12, 1994 - 10 a.m.** – Public Hearing
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia.

† **January 17, 1994** – 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 Corrections intends to amend regulations entitled: **VR 230-30-001. Public Participation Guidelines.** The purpose of the proposed regulations is to outline how the Board of Corrections plans to ensure public participation in the formation and development of regulations as required in the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7.1 and 53.1-5 of the Code of Virginia.

Contact: Amy Miller, Agency Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

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† **January 17, 1994** – 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 Corrections intends to repeal regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities.** The Board of Corrections is repealing this regulation; however, the board is including the provisions of this regulation in VR 230-30-005:1, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

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

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

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† **December 15, 1993 - 10 a.m.** – Public Hearing
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia.

† **January 17, 1994** – 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 Corrections intends to adopt regulations entitled: **VR 230-30-005:1. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed regulation is to fulfill the Board of Corrections' obligation to 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. These regulations will supersede VR 230-30-008, Regulations for State Reimbursement of Local Correctional Facility Construction Costs, and VR 230-30-005, Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities.

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

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

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† **January 17, 1994** – 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 Corrections intends to repeal regulations entitled: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Construction Costs.** The Board of Corrections is repealing this regulation; however, the board is including the provisions of this regulation in VR 230-30-005:1, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

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

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

Liaison Committee

† **November 18, 1993 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. ♿

A meeting to continue to address criminal justice matters.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235.

BOARD OF DENTISTRY

† **December 2, 1993 - 8:30 a.m.** – Open Meeting
† **December 3, 1993 - 8:30 a.m.** – Open Meeting
† **December 4, 1993 - 8:30 a.m.** – Open Meeting
6606 West Broad Street, Richmond, Virginia. ♿

The board will hold formal hearings (December 2 and 3) and conduct board business to include reviewing public comments and considering proposed regulations. Committee reports including legislative/regulatory, executive committee and exam negotiations will be on the agenda. This is a public meeting and there will be a 20-minute public comment period from 8:40 a.m. to 9 a.m. on Saturday, December 4, 1993, unless scheduled hearings are cancelled, at which time comments will be received at 8:40 a.m. to 9 a.m. on Friday, December 3, 1993.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

BOARD OF EDUCATION

November 17, 1993 - 8:30 a.m. – Open Meeting
November 18, 1993 - 8:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

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December 3, 1993 - 4 p.m. – Public Hearing
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

December 3, 1993 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Education intends to amend regulations entitled: **VR 270-01-0034. Regulations Governing the Operation of Proprietary Schools and Issuing of Agent Permits.** The proposed revisions increase user fees to the schools and update and provide consistency between the regulations and current practice. For more information or to receive a copy of the proposals contact Carol Buchanan at the address below.

Statutory Authority: §§ 22.1-321 and 22.1-327 of the Code of Virginia.

Contact: Carol Buchanan, Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2848 or toll-free 1-800-292-3820.

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

December 17, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Boards of Education; Mental Health, Mental Retardation and Substance Abuse Services; Social Services; and Youth and Family Services intend to amend regulations entitled: **VR 270-01-003, VR 470-02-01, VR 615-29-02, and VR 690-40-004. Standards for Interdepartmental Regulation of Residential Facilities for Children.** This regulation is designed to assure that adequate care, treatment and education are provided by residential facilities for children. The proposed revisions amend and clarify requirements governing participation of residents in human research and duration of licenses/certificates.

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

Written comments may be submitted through December 17, 1993, to Rhonda M. Harrell, Office of Interdepartmental Regulation, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: John J. Allen, Jr., Coordinator, Office of Interdepartmental Regulation, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1960.

STATE EDUCATION ASSISTANCE AUTHORITY

December 17, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Education Assistance Authority intends to amend regulations entitled: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs.** The purpose of the proposed amendment 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 December 17, 1993, to Marvin Ragland, Virginia Student Assistance Authorities, 411 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.

STATE BOARD OF ELECTIONS

November 22, 1993 - 10 a.m. – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Square, Richmond, Virginia. ♿

A meeting to certify the results of the November 2, 1993, general election.

Contact: Margaret O. "Jane" Jones, Executive Secretary Senior, State Board of Elections, 200 N. 9th St., Room 101, Richmond, VA 23219, telephone (804) 692-3014 or toll-free 1-800-552-9745.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **December 1, 1993 - 6 p.m.** – Open Meeting
Alexandria Police Department, 2003 Mill Road, Alexandria, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

December 2, 1993 - 5:30 p.m. – Open Meeting
† **January 6, 1994 - 5:30 p.m.** – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY, AND MANASSAS PARK CITY

November 15, 1993 - 1:30 p.m. – Open Meeting
One County Complex Court, Potomac Conference Room, Prince William, Virginia. ♿

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdictions. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, One County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **December 15, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 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 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.

Work Group on Detection/Quantitation Levels

† **January 12, 1994 - 1:30 p.m.** – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Glen Allen, Virginia. ♿

The department has established a work group on detection/quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of the Department of Environmental Quality. Other meetings of the work group have been scheduled at the same time and

location for January 26, February 9, February 23, March 9, March 23, April 6, and April 20, 1994. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

BOARD OF GAME AND INLAND FISHERIES

† **December 2, 1993 - 9 a.m.** – Open Meeting
Rappahannock Community College, Warsaw Campus, Warsaw, Virginia.

The board will hold a facilitated workshop to review their operating procedures and how they relate to staff and others. If necessary, other general and administrative matters may be discussed, and the board may hold an executive session.

Contact: Belle Harding, Secretary to the Director, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

November 19, 1993 - 10 a.m. – Open Meeting
3600 West Broad Street, Conference Room 3, Richmond, Virginia. ♿

A general board meeting.

November 19, 1993 - 10 a.m. – Open Meeting
3600 West Broad Street, Conference Room 2, Richmond, Virginia. ♿

Grading of October examination.

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 ☎

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December 20, 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 for Geology intends to repeal regulations entitled: **VR 355-01-1, Public Participation Guidelines** and adopt regulations entitled **VR 355-01-1:1, Public Participation Guidelines.** The proposed guidelines will set procedures for the Board for Geology to follow to inform and incorporate public participation when promulgating geology regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1402 of the Code of Virginia.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

VIRGINIA HAZARDOUS MATERIALS EMERGENCY RESPONSE ADVISORY COUNCIL

† **December 13, 1993 - 10 a.m.** – Open Meeting
Sheraton Park South, 9901 Midlothian Turnpike, Richmond, Virginia.

The business of the meeting will consist of introductions of new members, update of response and training programs, a briefing on the Hazardous Materials Transportation Safety Act (HMTUSA) Grant Application, and a report on SARA Title III planning and training.

Contact: Addison E. Slayton, State Coordinator, Department of Emergency Services, 310 Turner Road, Richmond, VA 23225, telephone (804) 674-2497.

HAZARDOUS MATERIALS TRAINING COMMITTEE

† **November 16, 1993 - 10 a.m.** – Open Meeting
Holiday Inn Koger Center, 1021 Koger Center Boulevard, Richmond, Virginia.

This meeting will be to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990 (ADA), desiring to attend this meeting should contact the Department of Emergency Services 10 days prior to the event to ensure appropriate accommodations are provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **January 14, 1994** – 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 repeal regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program.** These regulations are no longer necessary since the program was discontinued in FY 1988 when appropriations for the program ended. The program reimbursed eligible hospitals for services provided to certain high-risk pregnant women and newborns whose family incomes

were below 100% of the federal poverty level. Services that were provided through the program are now available through Medicaid-reimbursed services as well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated care.

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

Contact: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

Commissioner's Waterworks Advisory Committee

† **November 18, 1993 - 10 a.m.** – Open Meeting
Office of Water Programs, East Central Field Office, 300 Turner Road, Richmond, Virginia.

A general business meeting.

Contact: Thomas B. Gray, P.E., Special Project Manager, 1500 E. Main St., Room 109, Richmond, VA 23219, telephone (804) 786-5566.

BOARD OF HEALTH PROFESSIONS

December 4, 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 Health Professions intends to adopt regulations entitled: **VR 365-01-2. Regulations Governing Practitioner Self-Referral.** The purpose of the proposed regulations is to implement the Practitioner Self-Referral Act enacted by the 1993 General Assembly.

Statutory Authority: § 54.1-2510 of the Code of Virginia.

Contact: Richard D. Morrison, Ph.D., Deputy Director for Research, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

November 23, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting.

December 21, 1993 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting followed by a public hearing beginning at noon.

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

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† **December 21, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, The Virginia Room, Richmond, Virginia.

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-000:1. Public Participation Guidelines.** The purpose of the proposed amendments is to allow for further identification and notification of interested parties as the council pursues the regulatory process. The guidelines set out a general policy for the use of standing or ad hoc advisory panels and consultation with the groups and individuals as the regulatory process is followed.

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

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

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† **December 21, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, The Virginia Room, Richmond, Virginia.

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and Regulations of the Virginia Health Services Cost Review Council.** Section 9-161.1 of the Code of Virginia requires that the Virginia Health Services Cost Review Council establish a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparison of the health care institution's performance to national and regional data. The amendments conform this regulation to the requirements of the new methodology.

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

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804)

786-6371.

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† **December 21, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, The Virginia Room, Richmond, Virginia.

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to adopt regulations entitled: **VR 370-01-002. Regulations to Measure Efficiency and Productivity of Health Care Institutions.** This regulation establishes a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparisons of a health care institution's performance to national and regional data.

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

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

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† **December 21, 1993 - Noon** – Public Hearing
Blue Cross/Blue Shield, 2015 Staples Mill Road, The Virginia Room, Richmond, Virginia.

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to adopt regulations entitled: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data Base System.** This regulation (i) establishes the filing requirements of patient level data by hospitals regarding inpatient discharges; (ii) establishes the fees which must be complied with; (iii) establishes the various alternatives for the submission of the data; (iv) provides for confidentiality of certain filings; and (v) clarifies the type of nonprofit health data organization the executive director shall contract with to fulfill the requirements of the Patient Level Data Base System.

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

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

HEMOPHILIA ADVISORY COMMITTEE

November 19, 1993 - 10 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Mezzanine Conference Room, Room 3, Richmond, Virginia.

The Advisory Board consults with the Board of Health regarding programs serving persons suffering from hemophilia and other related bleeding diseases. The board meets annually to discuss (i) budget status; (ii) developments and future trends in blood products; (iii) update on impact of patient insurance program; (iv) planning for future developments in the Hemophilia Program; and (v) plan for treatment and management of hemophilia patients who are HIV positive or suffering from Acute Immune Deficiency Syndrome.

Contact: Pamela G. Plaster, R.N., Hemophilia Nurse Coordinator, Division of Children's Specialty Services, Box 461, MCV Station, Richmond, VA 23298-0461, telephone (804) 786-3306.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

November 17, 1993 - 9 a.m. – Open Meeting
December 14, 1993 - 9 a.m. – Open Meeting
January 11, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, SCHEV Conference Room, 9th Floor, Richmond, Virginia.

A general business meeting. For more information, contact the council.

Contact: Anne Pratt, Associate Director, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632.

DEPARTMENT OF HISTORIC RESOURCES

November 16, 1993 - 7:30 p.m. – Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

November 17, 1993 - 7:30 p.m. – Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

December 6, 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 Historic Resources intends to adopt regulations entitled: **VR 392-01-02. Evaluation Criteria and Procedures for Nomination of Property to the National Register of Historic Places or for Designation as a National Historic Landmark.** The proposed regulation establishes the evaluation criteria by which the director shall determine whether

property should be nominated to the National Park Service for inclusion in the National Register of Historic Places or for designation as a National Historic Landmark. Pursuant to the requirements of § 10.1-2202 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification to property owners and local governments, along with a requirement for public hearings in certain cases, prior to the nomination of property by the director to the National Park Service. Finally, the proposed regulation sets out the procedure by which affected property owners can object to the proposed inclusion of their property in the National Register or to the proposed designation of their property as a National Historic Landmark. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2202 of the Code of Virginia.

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

Board of Historic Resources

November 16, 1993 - 7:30 p.m. – Public Hearing
Lyceum, 201 South Washington Street, Alexandria, Virginia.

November 17, 1993 - 7:30 p.m. – Public Hearing
Roanoke City Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

December 6, 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 Historic Resources intends to adopt regulations entitled: **VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.** The proposed regulation establishes the evaluation criteria by which the board shall determine whether property should be designated for inclusion in the Virginia Landmarks Register. Pursuant to the requirements of § 10.1-2205 of the Code of Virginia, the criteria are consistent with the criteria set forth in 36 CFR, Part 60, the federal regulations that implement the National Historic Preservation Act, as amended (P.L. 89-665). In addition, the proposed regulation sets out procedures for written notification of property owners and local governments, along with a requirement for public hearings in certain cases, prior to a designation by the board. Finally, the proposed regulation sets out the procedure by which affected property owners can object to a proposed designation and prevent the board from making the designation. The proposed procedures are consistent with the requirements of §§ 10.1-2206.1 and 10.1-2206.2 of the Code of Virginia.

Statutory Authority: § 10.1-2205 of the Code of Virginia.

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

HOPEWELL INDUSTRIAL SAFETY COUNCIL

December 7, 1993 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

A Local Emergency Preparedness committee meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-200. Virginia Private Activity Bond Regulations.** The purpose of the proposed amendments is to change year-end carryforward allocation priorities.

Statutory Authority: § 15.1-1399.15 of the Code of Virginia.

Contact: Charles Gravatt, Financial Assistance Coordinator, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7025.

INDUSTRIAL DEVELOPMENT ADVISORY BOARD

† **November 30, 1993 - 10:30 a.m.** – Open Meeting
Department of Economic Development, Central Fidelity Building, 1021 East Cary Street, Board Room, 14th Floor, Richmond, Virginia. ♿

A regular meeting.

Contact: Christy Fiedler, Administrative Staff Assistant, 1021 E. Cary St., P.O. Box 798, Richmond, VA 23206-0798, telephone (804) 371-8106 or (804) 371-0327/TDD ☎

COUNCIL ON INFORMATION MANAGEMENT

† **November 19, 1993 - 9 a.m.** – Open Meeting
1100 Bank Street, Suite 901, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regularly scheduled meeting.

Contact: Linda Hening, Administrative Assistant, Council on Information Management, 1100 Bank St., Suite 901, Richmond, VA 23219, telephone (804) 225-3622 or (804) 225-3624/TDD ☎

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

November 15, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The tentative agenda items for consideration by the board include:

1. Permit-Required Confined Spaces for General Industry, § 1910.146; Corrections (VR 425-02-92).

2. Incorporation of General Industry Safety and Health Standards Applicable to Construction Work and Technical Amendments; final rule.

3. Revision of the Public Participation Guidelines for the Safety and Health Codes Board; proposed regulations (VR 425-02-101).

4. Revision of the Administrative Regulations Manual; proposed regulations (VR 425-02-11).

5. Underground Construction, § 1926.800; Technical Corrections (VR 425-02-65).

5. Subpart P - Excavations, § 1926.650; Technical Corrections (VR 425-02-89).

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

LIBRARY BOARD

November 15, 1993 - 10:30 a.m. – Open Meeting
January 24, 1994 - 10:30 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

November 17, 1993 - 11 a.m. – Open Meeting
December 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.

LONGWOOD COLLEGE

Executive Committee

December 2, 1993 - 5 p.m. – Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

† **November 22, 1993 - 10 a.m.** – Open Meeting
2201 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☎ .

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† **January 24, 1994 - 10 a.m.** – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 Lottery Board intends to amend regulations entitled: **VR 447-01-1. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with statutory changes to establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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† **January 24, 1994 - 10 a.m.** – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 Lottery Board intends to amend regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed amendments is to include appeal procedures for placement of an instant ticket vending machine or a self-service terminal, procurement procedures for the purchase of goods and services exempt from competitive procurement and contract change order procedures.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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† **January 24, 1994 - 10 a.m.** – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 Lottery Board intends to amend regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed amendments is to incorporate housekeeping and technical changes, as well as substantive changes to include lottery retailer conduct, license standards validation requirements and payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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† **January 24, 1994 - 10 a.m.** – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 Lottery Board intends to amend regulations entitled: **VR 447-02-2. On-line Game Regulations.** The proposed amendments incorporate numerous housekeeping, technical and substantive changes throughout the On-Line Game Regulations, including retailer compensation and conduct, license and operational fees, license standards, validation requirements and payment of prizes and disposition of unclaimed prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

MANUFACTURED HOUSING BOARD

November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Manufactured Housing Board intends to amend regulations entitled: **VR 449-01-01. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with statutory changes by establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 36-85.18 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Manufactured Housing Board intends to adopt regulations entitled: **VR 449-01-02. Manufactured Housing Licensing and Transaction Recovery Fund Regulations.** The purpose of the proposed amendments is to provide increased consumer protection for buyers and users of manufactured homes through mandatory licensing and

regulation of manufactered home manufacturers, dealers, brokers and salespeople, statutorily mandated warranties, and a Transaction Recovery Fund. The regulation will be used in the administration and enforcement of the Manufactured Housing Licensing Law and Recovery Fund.

Statutory Authority: §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Contact: Curtis L. McIver, Associate Director, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7160.

MARINE RESOURCES COMMISSION

† **November 23, 1993 - 9:30 a.m.**
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ♿ (Interpreter for the 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 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, Virginia 23607-0756, telephone (804) 247-8088, toll-free 1-800-541-4646 or (804) 247-2292/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-05-1000.0000. State/Local Hospitalization Program.** The purpose of the proposed amendments is to modify the state/local hospitalization fiscal year to limit the allocation of remaining state funds and limit the use of funds allocated for one fiscal year to that year.

Sections 32.1-343 through 32.1-350 of the Code of Virginia 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% 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 the 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. The fund will be reallocated for payment of the following fiscal year claims.

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. This change is advantageous to the public because the agency will be better able to forecast the funds necessary to cover anticipated medical needs for those eligible to the SLH program.

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

Written comments may be submitted through January 14, 1994, to David Austin, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

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

Drug Utilization Review Board

† **January 7, 1994 - 3 p.m.** – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting. Routine business will be conducted.

Contact: Carol B. Pugh, Pharm.D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

November 24, 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 adopt regulations entitled: **VR 465-11-1. Licensed Acupuncturists.** The proposed initial regulations address the reenactment of the statutes pertaining to licensed acupuncturists and include: general provisions for acupuncturists, requirements for licensure, scope of practice, renewal and reinstatement of licensure, and fees. The regulations are promulgated through the Acupuncture Advisory Committee and the Board of Medicine. The public hearing is being held at a location that is accessible to the disabled.

Statutory Authority: §§ 54.1-100 through 54.1-114, 54.1-2400, and 54.1-2956.9 through 54.1-2956.11 of the Code of Virginia.

Written comments may be submitted until November 24, 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.

Advisory Committee on Acupuncturists

December 1, 1993 - 10 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ♿

A meeting to (i) review and respond to public comments to the proposed regulations for the practice of acupuncturist; (ii) review and approve the application for licensure; and (iii) make recommendations to the full board to adopt the regulations for final promulgation. The chairman will entertain public comments for 15 minutes following the adoption of the agenda.

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 ☎

Credentials Committee

† **December 11, 1993 - 8:15 a.m.** – Open Meeting
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 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Executive Committee

† **December 10, 1993 - 9 a.m.** – Open Meeting
6606 West Broad Street, 5th Floor, Board Room 1,

Richmond, Virginia.

The committee will hear disciplinary issues; review regulations VR 465-03-01, Physical Therapy, VR 465-05-01, Physician's Assistants, VR 465-08-01, Occupational Therapy, VR 465-11-01, Acupuncture and adopt amendments and new regulations for approval of promulgation; act upon certain issues as presented; entertain a petition for rule making relating to regulations for Optometry Formulary; and review cases for possible closing. The chairman will entertain public comments following the adoption of the agenda for 10 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

Ad Hoc Committee on HIV

† **January 14, 1994 - 9 a.m.** – Open Meeting
6606 West Broad Street, Board Room 3, 5th Floor, Richmond, Virginia.

A meeting to review the board's position on HIV and make recommendations to the full board. The chairman will entertain public comments for 10 minutes following the adoption of the agenda.

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

Informal Conference Committee

November 18, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

November 19, 1993 - 9:30 a.m. – Open Meeting
Sheraton Resort and Conference Center, 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

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **November 30, 1993 - 10 a.m.** – Open Meeting
Northern Virginia Mental Health Institute, 3302 Gallows Road, Falls Church, Virginia.

A regular monthly meeting. Agenda to be published on November 23. The agenda can be obtained by calling Jane Helfrich.

Tuesday: Informal session 8 p.m.

Wednesday: Committee meetings 9 a.m.
Regular session 10 a.m.

See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, Mental Health, Mental Retardation and Substance Abuse Services Board, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

December 2, 1993 - 7 p.m. – Open Meeting
Camp 11, 1845 Orange Road, Culpeper, Virginia.

From 7 p.m. to 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. The board will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 1845 Orange Road, Culpeper, VA 22701, telephone (703) 825-4562.

VIRGINIA MUSEUM OF FINE ARTS

Collections Committee

† **November 16, 1993 - 2 p.m.** – Open Meeting
Virginia Museum of Fine Arts - exact location to be announced.

A regularly scheduled meeting to consider gifts of arts works, purchases and loans.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

Education and Programs Committee

† **November 17, 1993 - 2 p.m.** – Open Meeting
Virginia Museum of Fine Arts, Auditorium, Richmond, Virginia.

A meeting to review programs and consider new

programming proposals.

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

† **November 16, 1993 - 11 a.m.** – Open Meeting
Virginia Museum of Fine Arts, Conference Room, Richmond, Virginia. ♿

A regularly scheduled meeting to conduct budget review.

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

† **November 18, 1993 - Noon** – Open Meeting
Virginia Museum of Fine Arts, Auditorium, Richmond, Virginia. ♿

A regularly scheduled meeting of the Board of Trustees to review committee and staff reports, review budget, and consider art acquisitions.

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

November 15, 1993 - 9 a.m. – Open Meeting
November 18, 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 of Nursing will conduct formal hearings in the morning and two special conference committees will conduct informal conferences in the afternoon.

November 16, 1993 - 8:30 a.m. – Open Meeting
November 17, 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 regular meeting 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 Tuesday, November 16, 1993. At 3 p.m. on November 16, 1993, the board will consider comments received during the comment period which ended on November 5, 1993, on proposed amendments to its regulations. Responses to comments will be adopted and the board will take action on the proposed regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

December 1, 1993 - 9:30 a.m. – Open Meeting
6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regularly scheduled board meeting.

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

BOARD FOR OPTICIANS

† **January 14, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Opticians intends to **repeal** regulations entitled: **VR 505-01-0. Public Participation Guidelines** and **adopt** regulations entitled: **VR 505-01-0:1. Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 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.

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

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

BOARD OF OPTOMETRY

† **November 29, 1993 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

Informal conference committee meetings. Public comment will not be received.

Contact: Carol Stamey, Administrative Assistant, 6606 W.

Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910.

VIRGINIA BOARD FOR PEOPLE WITH DISABILITIES

November 16, 1993 - 7 p.m. – Open Meeting
James Madison Building, 109 Governor Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An executive committee meeting.

November 17, 1993 - 9 a.m. – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A committee meeting followed by a board meeting at 1 p.m.

Contact: Dave Dunaway, Administrative Assistant, P.O. Box 613, Richmond, VA 23205-0613, toll-free 1-800-846-4460 or (804) 786-0016/TDD ☎

DEPARTMENT OF PERSONNEL AND TRAINING

December 17, 1993 – Written comments may be submitted until 3 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Personnel and Training intends to adopt regulations entitled: **VR 525-01-1. Public Participation Guidelines.** The purpose of the proposed regulation is to establish guidelines for public participation in regulation development and promulgation.

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

Contact: Gina Irby, Regulatory Coordinator, Department of Personnel and Training, Office of Health Benefits, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6212.

DEPARTMENT OF STATE POLICE

November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **VR 545-00-01. Regulations Relating to Public Participation Policy.** This amendment to the agency's public participation guidelines identifies specific public participation procedures consistent with recent changes to the Administrative Process Act. The policy will now provide for use of ad hoc advisory groups, standing advisory committees or consultation with groups and individuals registering interest in assisting with drafting or formation of regulation under given circumstances.

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.

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

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to amend regulations entitled: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.** These proposed changes to the regulations are made to be consistent with recent changes in state law, federal regulations, nationally accepted standards and automotive practices. Minor technical and administrative changes are included.

Statutory Authority: §§ 46.2-909, 46.2-1002, 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.

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

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December 3, 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 Department of State Police intends to adopt regulations entitled: **VR 545-01-11. 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 governing the purchase of handguns in excess of one within a 30-day period.

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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December 3, 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 Department of State Police intends to adopt regulations entitled: **VR 545-01-12. Regulations Governing the Creation of a Criminal Firearms Clearinghouse.** The proposed regulations establish, within the Department of State Police, a Criminal Firearms Clearinghouse as a central repository of information on all firearms seized, forfeited, found, or otherwise coming into the hands of any state and local law-enforcement agency.

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

Contact: Lieutenant R. Lewis Vass, Assistant Records Management Officer, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-2022.

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-13. Regulations Relating to Standards and Specifications for Regrooved or Regroovable Tires.** This regulation establishes specifications which define standards for regroovable or regrooved tires.

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

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

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.** This regulation establishes standards and specifications for the warning stickers or decals required to be placed on all-terrain vehicles sold by retailers in the Commonwealth.

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

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

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-15. Regulations Relating to Standards and Specifications for Back-Up Audible Alarm Signals.** This regulation establishes specifications for the back-up audible alarm signals required on garbage and refuse collection and disposal vehicles and certain vehicles used primarily for highway repair and maintenance.

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

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

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.** This regulation establishes standards and specifications for warning lights used in the escorting or towing of overdimensional materials, equipment, boats or manufactured housing units by authority of a highway permit issued pursuant to § 46.2-1139 of the Code of Virginia.

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

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

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November 19, 1993 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of State Police intends to adopt regulations entitled: **VR 545-01-17. Regulations Relating to Standards and Specifications for the Safety Lights for Farm Tractors in Excess of 108 Inches in Width.** This regulation establishes specifications for safety lights used on farm tractors and multi-purpose drying units in excess of 108 inches in width which are hauled, propelled, transported or moved on the highway.

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

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

POLYGRAPH EXAMINERS ADVISORY BOARD

December 7, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to administer the Polygraph Examiners Licensing Examination to eligible polygraph examiner interns and to consider other matters which may require board action.

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

BOARD OF PROFESSIONAL COUNSELORS

November 19, 1993 - 8:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Rooms 1 and 4, Richmond, Virginia.

At 8:30 a.m. the board will conduct an informal conference in accordance with § 9-6.14:11 of the Code of Virginia regarding the credentials of a prospective applicant. No public comments will be received. A board meeting will begin at 10 a.m. to (i) conduct general board business to include responding to committee reports; and (ii) regulatory review. No public comments will be received.

Contact: Evelyn B. Brown, Executive Director, or Joyce D. Williams, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9912.

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† **December 17, 1993 - 9 a.m.** – Public Hearing
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia.

† **February 13, 1994** – 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 Professional Counselors intends to amend regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed amendments is to set a new examination fee and reduce renewal fees.

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **January 15, 1994** – 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 Professional and Occupational Regulation intends to adopt regulations entitled: **VR 190-00-02. Employment Agencies Program Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the employment agencies program to follow to inform and incorporate public participation when promulgating regulations.

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

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

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† **January 15, 1994** – 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 Professional and Occupational Regulation intends to **repeal** regulations entitled: **VR 190-00-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 190-00-03. Polygraph Examiners Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 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.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-1802 of the Code of Virginia.

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

BOARD OF PSYCHOLOGY

November 16, 1993 - 10 a.m. – Open Meeting

Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia.

A meeting to conduct general board business, review public comments and adopt final regulations.

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.

Credentials Committee

November 16, 1993 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 1, Richmond, Virginia.

A meeting to conduct an informal fact-finding in accordance with §§ 54.1-2400 and 9-6.14:11 of the Code of Virginia, and VR 565-01-2, to determine the eligibility of an applicant for residency acceptance. No public comment will be received.

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.

RADIATION ADVISORY BOARD

November 30, 1993 - 9 a.m. – Open Meeting
State Capitol, House Room 1, Richmond, Virginia.

An annual meeting to discuss radiological health issues.

Contact: Leslie P. Foldesi, 1500 E. Main St., Room 104-A, Richmond, VA 23219, telephone (804) 786-5932 or toll-free 1-800-468-0138.

REAL ESTATE APPRAISER BOARD

December 7, 1993 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

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

REAL ESTATE BOARD

† **December 10, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A work session for review of Real Estate Board regulations.

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

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† **January 14, 1994** – 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 Real Estate Board intends to **repeal** regulations entitled: **VR 585-01-0. Public Participation Guidelines** and **adopt** regulations entitled: **VR 585-01-0:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Real Estate Board to follow to inform and incorporate public participation when promulgating real estate regulations.

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

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

BOARD OF REHABILITATIVE SERVICES

† **December 2, 1993 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular monthly business meeting.

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

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

November 17, 1993 - 10 a.m. – Open Meeting
Ramada Inn, 1130 Motel Drive, Allegheny Room, Woodstock, Virginia.

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia, and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main St., Suite 117, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1750.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

December 20, 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 for Professional Soil Scientists intends to **repeal** regulations entitled: **VR 627-01-1, Public Participation Guidelines** and **adopt** regulations entitled **VR 627-01-1:1, Public Participation Guidelines.** The proposed guidelines will set procedures for the Board for Professional Soil Scientists to follow to inform and incorporate public participation when promulgating soil science regulations.

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

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

STD/HIV ADVISORY COUNCIL

† **December 10, 1993 - 10 a.m.** – Open Meeting
Main Street Station, 1500 East Main Street, Room 301, Richmond, Virginia.

A meeting to focus on Ryan White Title II plans for 1994, an HIV prevention update, STD program planning for 1994, and health care reform.

Contact: Kathryn A. Hafford, Assistant Director of Health Care Services, Main Street Station, 1500 E. Main St., Room 110, P.O. Box 2448, Richmond, VA 23219, telephone (804) 225-4844.

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

Board of Directors

November 18, 1993 - 10 a.m. – Open Meeting
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia.

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-5626.

DEPARTMENT OF TAXATION

† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to adopt regulations entitled: **VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by adult care residences and adult day care centers.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.** This regulation clarifies the application of the sales and use tax to agricultural processors and seafood processors.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repairs and Replacement Parts, and Maintenance Materials.** This regulation clarifies the application of the retail sales and use tax to aircraft sales, leases and rentals and repairs and maintenance thereof.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: W. Bland Sutton, III, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.** This regulation clarifies the application of the sales and use tax to commercial watermen.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials and Equipment.** This regulation clarifies what constitutes taxable/exempt packaging materials and equipment for purposes of the retail sales and use tax.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: W. Bland Sutton, III, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by dentists, dental laboratories and dental supply houses.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to repeal regulations entitled: **VR 630-10-39. Retail Sales and Use Tax: Federal Areas.** The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to repeal regulations entitled: **VR 630-10-39.2. Retail Sales and Use Tax: Flags.** The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR**

630-10-45. Retail Sales and Use Tax: Governments. This regulation clarifies existing department policy with respect to purchases and sales by the Commonwealth, its political subdivisions and the federal government.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.** This regulation clarifies the application of the sales and use tax to harvesting of forest products.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by hospitals, nursing homes and other medical-related facilities.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to adopt regulations entitled: **VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.** This regulation clarifies the application of the retail sales and use tax to medical equipment and supplies.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.** This regulation clarifies the application of the retail sales and use tax to purchases and sales of prescription drugs, nonprescription drugs and proprietary medicines and controlled drugs.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts.** This regulation clarifies the application of the retail sales and use tax purchases and sales by licensed physicians, surgeons, and other practitioners of the healing arts.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to adopt regulations entitled: **VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances–Visual and Audio.** This regulation clarifies the application of the retail sales and use tax to sales of eyeglasses, contact lenses and other ophthalmic aids and hearing aids and supplies. The provisions of this regulation previously were part of another regulation.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-92. Retail Sales and Use Tax: Research.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions made in performing basic research and research and development.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-97.1. Retail Sales and Use Tax: Services.** This regulation clarifies the application of the retail sales and use tax to sales of services.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.** This regulation clarifies the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion and repair.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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† **January 10, 1994 - 10 a.m.** – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – 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 Department of Taxation intends to amend regulations entitled: **VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions for typesetting.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

COMMONWEALTH TRANSPORTATION BOARD

† **November 15, 1993 - 2 p.m.** – Open Meeting
Virginia Military Institute, Moody Hall, Board Room,

Lexington, 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

November 17, 1993 - 9 a.m. – Open Meeting
December 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 OF VETERINARY MEDICINE

† **December 6, 1993 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

Formal hearings and a board meeting.

† **December 7, 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)

Informal conferences.

Contact: Terri H. Behr, Administrative Assistant, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

VIRGINIA RACING COMMISSION

December 8, 1993 - 9:30 a.m. – Public Hearing
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia.

January 3, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to amend regulations entitled: **VR 662-01-01. Public Participation Guidelines.** The purpose of the proposed amendment is to bring the public participation guidelines into conformity with the recent changes in the Administrative Process Act.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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December 8, 1993 - 9:30 a.m. – Public Hearing
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia.

January 3, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to adopt regulations entitled: **VR 662-02-05. Satellite Facilities.** The purpose of the proposed regulation is to establish conditions under which pari-mutuel wagering on horse races may take place at satellite facilities.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

January 22, 1994 - 11 a.m. – Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

VIRGINIA VOLUNTARY FORMULARY BOARD

December 16, 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. Thomson, Director, Bureau of Pharmacy Services, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

† **December 14, 1993 - 7 p.m.** – Information Session
† **December 14, 1993 - 8 p.m.** – Public Hearing
Osborne High School, 9005 Tudor Lane, Lecture Room, Manassas, Virginia.

† **December 15, 1993 - 7 p.m.** – Information Session
† **December 15, 1993 - 8 p.m.** – Public Hearing
College of William and Mary, Landrum Drive, Millington Auditorium, Williamsburg, Virginia.

† **December 16, 1993 - 7 p.m.** – Information Session
† **December 16, 1993 - 8 p.m.** – Public Hearing
Virginia Western Community College, 3095 Colonial Avenue, S.W., Whitman Auditorium, Roanoke, Virginia.

† **January 17, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to **repeal** regulations entitled **VR 672-40-01. Infectious Waste Management Regulations** and **adopt** regulations entitled **VR 672-40-01:1. Regulated Medical Waste Management Regulations.** The regulations contain new management rules for certain medical waste concerning generation, treatment, storage, transportation and disposal of the wastes.

The board, in this action to repeal and replace the Commonwealth's regulations on this subject, intends to improve them through several changes. It wishes to direct attention to certain issues for which the board expressly desires the help and opinion of the public. The board is seeking comments that include explanation, suggested regulatory language, data and basis for the comment. Prior to taking action on final regulations, the board wishes to have a full review and thorough discussion of these and any issues citizens feel are important. Attention to the following issues is specifically requested:

1. Section 2.4 and others require that existing facilities comply with the regulations immediately, except where the existing permit contains a conflict with the new regulations, the conflicting permit condition may be used for six months. Is this time period appropriate and practical, or should another period or procedure be substituted?

2. Sections 11.3 and 11.4 establish procedures, protocols, forms, and standards for approval of new technologies for treating regulated medical waste. Are these technically adequate and are there additional constraints which should be applied to emerging technologies?

3. Are there units, like limited small clinics, which should be eligible for the partial exemption in § 3.2? Are there other aspects of the regulations to which exemptions should accrue through this item?

4. Do the specific references and monitoring requirements in §§ 4.8, 7.6, 8.5 and 9.5 provide adequate control of radiological materials at treatment facilities. Are there specific standards or means which might improve protection from these materials?

5. The standard in Parts V and VI for nonrefrigerated storage of regulated medical waste is seven days after generation. Is this time period too short or too long?

6. The regulations in Parts VII, IX, and X contain certain new standards, for example grinding of regulated medical waste and testing of treatment equipment for alternative technologies. Three new treatment technologies are approved with specific standards. The board would like comment on those standards and detailed specific recommendations for other requirements that are appropriate.

7. The amended regulations require incinerator ash and pollution control dust to be segregated and tested separately. Should the regulations allow the mixing of the ash and dust after testing is complete? Should the mixing be allowed on-site prior to shipment for disposal?

8. Part X contains new procedures for formal permitting of facilities and Part XI contains new procedures for issuance of variances from the regulations. Do these processes adequately address due process, and are they sufficiently clear and comprehensible?

9. Several requirements in the regulations have threshold size criteria such that small facilities may be exempt from a particular requirement. Should small generators or facilities be given such exemptions, and are each of the thresholds set at an appropriate level?

The General Assembly directed the board to consider nine factors in developing the regulations. The board would like the public to suggest any ways the regulations could better address the following nine factors:

1. An assessment of the annual need for the disposal of infectious waste generated in the Commonwealth.

2. Means of reducing the volume of infectious waste or similar wastes containing or producing toxic substances disposed of in the Commonwealth.

3. The availability and feasibility of methods of disposing of infectious waste other than incineration.

4. Criteria for siting infectious waste incinerators in order to safeguard public health and safety to maximum extent.

5. Standards for assessing the economic feasibility of proposed commercial infectious waste incinerators.

6. The propriety of establishing different criteria and procedures for the permitting of incinerators disposing of infectious wastes generated on-site or off-site.

7. The economic demand for the importation of infectious waste generated outside the Commonwealth to existing and future commercial infectious waste incinerators located in the Commonwealth, and an estimate of the fair share of infectious capacity to be allowed for infectious waste generated outside the Commonwealth.

8. The impact of the Clean Air Act (42 U.S.C § 1857 et seq.), as amended by the 1990 amendments (P.L. 101-549) on the incineration of infectious waste by hospitals.

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).

In addition to the issues and factors listed above, the board welcomes comments on all parts of the proposed regulations. In order to be most helpful, comments need to be very specific and make detailed suggestions for alternative requirements or wording. Support data and related information, of which the board may not be aware, will greatly aid the board in reaching a decision.

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

Written comments may be submitted until 5 p.m. on January 17, 1994, to the Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219. Copies of the proposed new regulations are available by writing the Department of Environmental Quality.

Contact: Robert G. Wickline, Director of Research, ORPD, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **November 16, 1993 - 10 a.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Training Room, Richmond, Virginia. ♿

A Testing Committee meeting.

† **November 17, 1993 - 9 a.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Training Room, Richmond, Virginia. ♿

Item Writing Committee will meet.

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 ☎

STATE WATER CONTROL BOARD

† **November 15, 1993 - 7 p.m.** – Public Hearing
Wickham Building, Route 301 North, Hanover Board of Supervisors Room, Hanover, Virginia. ♿

A public hearing to receive comments on the proposed reissuance of Virginia Pollution Abatement (VPA) Permit No. VAP00510 for Recyc Systems, Inc. The purpose of the hearing is to receive comments on the proposed permit reissuance and the potential effect of the pollutant management activities on water quality or beneficial uses of state waters.

Contact: Doneva A. Dalton, Hearings Reporter, Department of Environmental Quality, 4900 Cox Rd., P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5162.

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† **January 5, 1994 - 2 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 10, 1994 - 2 p.m.** – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

† **January 11, 1994 - 2 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1

of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from heavy manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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† **January 5, 1994 - 2 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 10, 1994 - 2 p.m.** – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

† **January 11, 1994 - 2 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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† **January 5, 1994 - 2 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 10, 1994 - 2 p.m.** – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

† **January 11, 1994 - 2 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, and Materials Recycling Facilities, and Steam Electric**

Power Generating Facilities. The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities, landfills, land application sites and open dumps, materials recycling facilities and steam electric power generating facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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† **January 5, 1994 - 2 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 10, 1994 - 2 p.m.** – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

† **January 11, 1994 - 2 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to authorize storm water discharges from construction sites. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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† **December 16, 1993 - 2 p.m.** – Public Hearing
Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Board Room, Richmond, Virginia.

January 18, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining.** The purpose of the proposed regulation is to adopt a general VPDES permit for the discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, other than fuels. A question and answer session will be held prior to the informational proceeding (public hearing) from 1:30 to 2 p.m. for interested persons to learn more about the regulation and ask questions of the staff. The meeting is being held at a 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 address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 9, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any person interested

in reviewing these materials should contact Cindy Berndt, (804) 527-5158, at the address listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 18, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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† **January 5, 1994 - 7 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 11, 1994 - 7 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

† **January 13, 1994 - 7 p.m.** – Public Hearing
Rockingham County Administration Center, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

January 28, 1994 – 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-22. Virginia Pollution Abatement General Permit for Intensified Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

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

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† **January 5, 1994 - 7 p.m.** – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

† **January 11, 1994 - 7 p.m.** – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

† **January 13, 1994 - 7 p.m.** – Public Hearing
Rockingham County Administration Center, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

January 28, 1994 – 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 Water Control Board intends to adopt regulations entitled: **VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143,

Richmond, VA 23230, telephone (804) 527-5316.

THE COLLEGE OF WILLIAM AND MARY

Board of Visitors

† **November 18, 1993 - 3 p.m.** – Open Meeting
† **November 19, 1993 - 8 a.m.** – Open Meeting
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia.

A regularly scheduled meeting to receive reports from several committees of the board, and to act on those resolutions that are presented by the administrations of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals and organizations who request it.

Contact: William N. Walker, Director, Office of University Relations, College of William and Mary, James Blair Hall, Room 308B, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2630.

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You.

BOARD OF YOUTH AND FAMILY SERVICES

† **December 9, 1993 - 8:30 a.m.** – Open Meeting
† **January 13, 1994 - 8:30 a.m.** – Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ♿

Committee meetings will begin at 8:30, and a general meeting will begin at 10 a.m. to review programs recommended for certification or probation, to consider adoption of draft policies, and to discuss other matters that may come before the board.

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

CHESAPEAKE BAY COMMISSION

November 18, 1993 - 1 p.m. – Open Meeting
November 19, 1993 - 9:15 a.m. – Open Meeting
Hyatt Regency Hotel, Baltimore, Maryland.

A quarterly meeting. Thursday's agenda includes Chesapeake Bay Foundation's "Report Card" on the Chesapeake Bay Program and the status of stream buffer protection in the watershed. Agenda on Friday includes blue crab management, implementing the 1993 Chesapeake Executive Council Directives, and exotic species.

Contact: Ann Pesiri Swanson, 60 West St., Suite 200, Annapolis, MD 21401, telephone (410) 263-3420.

JOINT SUBCOMMITTEE STUDYING CRIME AND VIOLENCE PREVENTION THROUGH COMMUNITY ECONOMIC STIMULATION AND DEVELOPMENT

† **November 17, 1993 - 1:30 p.m.** – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of a work session. HJR 593.

Contact: Oscar R. Brinson, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS WITH DISABILITIES

November 19, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

The subcommittee will meet to hear recommendations on early intervention. HJR 627.

Contact: Jessica Bolecek, Staff Attorney, Division of Legislative Services, 910 Capitol Square, Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING HUMAN IMMUNODEFICIENCY VIRUSES

November 29, 1993 - 10 a.m. – Public Hearing
Alexandria City Council Chamber, 301 King Street, Alexandria, Virginia.

The joint subcommittee will meet for a public hearing at 10 a.m. A work session will begin at 1:30 p.m. and will include reports from various studies relating to the joint subcommittee's work. HJR 692.

Contact: Norma Szakal, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

November 15, 1993 - 2 p.m. – Open Meeting
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia.

This will be a public information session on the Virginia Growth Strategies Act. Public comments are invited. For a copy of the legislation, contact the commission office.

Contact: Katherine L. Imhoff, Executive Director, General Assembly Building, 910 Capitol Street, Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

JOINT SUBCOMMITTEE STUDYING SOLID WASTE MANAGEMENT AND RECYCLING NEEDS

November 16, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia.

The committee will meet to discuss regionalization and 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.

STATE WATER COMMISSION

December 1, 1993 - 10 a.m. – Open Meeting
General Assembly Building, 910 Capitol Square, 6th Floor Conference Room, Richmond, Virginia.

A meeting to discuss proposed legislation.

Contact: Shannon Varner, Staff Attorney, Division of Legislative Services, 2nd Floor, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

VIRGINIA COMMISSION ON YOUTH

November 16, 1993 - 1 p.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A public hearing on juvenile justice concerns: Serious Juvenile Offenders "Criteria for the Trial of Juvenile Offenders as Adults." HJR 431. The Serious Offender Task Force has conducted extensive data analysis on the issue of juvenile transfer and has developed draft legislation providing more specified criteria to allow transfer, expanded judicial options on the juvenile court level. Testimony in response to these draft proposals are welcome. Those wishing a copy of the draft legislation may send a self-addressed, stamped envelope to the commission. Copies will be mailed after November 1. Individuals wishing to testify may register in person the day of the hearing or contact the commission by 5 p.m. on November 15. Presenters will be scheduled for up to five minutes. In general, appearances will be scheduled on a first-come, first-served basis. The chairman invites individuals to include recommendations in their statements and asks that presenters bring 14 copies of their prepared statements to the hearing, if possible. Interested persons who are unable to attend the public hearing may submit written testimony to the commission by November 10.

November 16, 1993 - 3 p.m. – Public Hearing
General Assembly Building, 910 Capitol Square, House Room C, Richmond, Virginia.

A public hearing on juvenile justice concerns: Detention Homes "Solutions to Secure Juvenile Detention Homes Overcrowding." HJR 446. The Detention Task Force is in the first year of a two-year study to develop recommended solutions to the problem of facility overcrowding and limited access to needed beds. Testimony on the part of citizens and professionals in the field expressing their view of the appropriate role of detention in the service continuum is encouraged. Individuals wishing to testify may register in person the day of the hearing or contact the commission by 5 p.m. on November 15. Presenters will be scheduled for up to five minutes. In general, appearances will be scheduled on a first-come, first-served basis. The chairman invites individuals to include recommendations in their statements and asks that presenters bring 14 copies of their prepared statements to the hearing, if possible. Interested persons who are unable to attend the public hearing may submit written testimony to the commission by November 10.

Contact: Joyce Huey, General Assembly Building, 910 Capitol Street, Richmond, VA 23219, telephone (804) 371-2481.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 15
Emergency Planning Committee, Local - Prince William County, Manassas City and Manassas Park City
Labor and Industry, Department of
- Safety and Health Codes Board
Library Board
Nursing, Board of

Population Growth and Development, Commission on
† Commonwealth Transportation Board
† Water Control Board, State

November 16
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
† Hazardous Materials Training Committee
Historic Resources, Department of
† Museum of Fine Arts, Virginia
- Collections Committee
- Finance Committee
Nursing, Board of
People with Disabilities, Virginia Board for
Psychology, Board of
- Credentials Committee
Solid Waste Management and Recycling Needs, Joint Subcommittee Studying
† Waste Management Facility Operators, Board for

November 17
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
Community Colleges, State Board for
† Corrections, Board of
† Crime and Violence Prevention Through Community Economic Stimulation and Development, Joint Subcommittee Studying
Education, Board of
Higher Education for Virginia, State Council of
Historic Resources, Department of
Local Debt, State Council on
† Museum of Fine Arts, Virginia
- Education and Programs Committee
Nursing, Board of
People with Disabilities, Virginia Board for
Sewage Handling and Disposal Appeals Review Board
Treasury Board
† Waste Management Facility Operators, Board for

November 18
† Architects, Board for
Chesapeake Bay Commission
Community Colleges, State Board for
† Conservation and Recreation, Department of
† Corrections, Board of
- Liaison Committee
Education, Board of
† Health, Department of
- Commissioner's Waterworks Advisory Committee
Medicine, Board of
† Museum of Fine Arts, Virginia
- Board of Trustees
Nursing, Board of
Student Assistance Authorities, Virginia
- Board of Directors
† William and Mary, College of
- Board of Visitors

November 19
Chesapeake Bay Commission
Early Intervention Services for Infants and Toddlers with Disabilities, Joint Subcommittee Studying
Geology, Board for
Hemophilia Advisory Committee
† Information Management, Council on
Interdepartmental Regulation of Children's Residential Facilities, Coordinating Committee for
Medicine, Board of
Professional Counselors, Board of
† William and Mary, College of
- Board of Visitors

November 22
Alcoholic Beverage Control Board
Elections, State Board of
† Lottery Department, State

November 23
Health Services Cost Review Council, Virginia
† Marine Resources Commission

November 24
Compensation Board

November 29
† Optometry, Board of

November 30
† Industrial Development Services Advisory Board
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
Radiation Advisory Board

December 1
† Emergency Planning Committee, Local - City of Alexandria
Medicine, Board of
- Advisory Committee on Acupuncturist
Nursing Home Administrators, Board of
Water Commission, State

December 2
Chesapeake Bay Local Assistance Board
† Dentistry, Board of
Emergency Planning Committee, Local - Chesterfield County
† Game and Inland Fisheries, Board of
Longwood College
- Executive Committee
Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board
† Rehabilitative Services, Board of

December 3
† Dentistry, Board of

December 4
† Dentistry, Board of

December 6

† Veterinary Medicine, Board of

December 7
† Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
Auctioneers Board
Hopewell Industrial Safety Council
Polygraph Examiners Advisory Board
Real Estate Appraiser Board
† Veterinary Medicine, Board of

December 8
† Contractors, Board for

December 9
† Youth and Family Services, Board of

December 10
† Medicine, Board of
- Executive Committee
† Real Estate Board
† STD/HIV Advisory Committee

December 11
† Medicine, Board of
- Credentials Committee

December 13
† Hazardous Materials Emergency Response Advisory Council

December 14
Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Higher Education for Virginia, State Council of

December 15
Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
† Environmental Quality, Department of
Local Debt, State Council on
Treasury Board

December 16
Voluntary Formulary Board, Virginia

December 17
Interdepartmental Regulation of Children's Residential Facilities, Coordinating Committee for

December 21
Health Services Cost Review Council, Virginia

December 22
Compensation Board

January 6, 1994
† Emergency Planning Committee, Local - Chesterfield County

January 7
† Medical Assistance Services, Department of
- Drug Utilization Review Board

January 11
Higher Education for Virginia, State Council of

January 12
† Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels

January 13
† Youth and Family Services, Board of

January 14
† Medicine, Board of
- Ad Hoc Committee on HIV

January 22
Visually Handicapped, Department for
- Advisory Committee on Services

January 24
Library Board

PUBLIC HEARINGS

November 15
† Water Control Board, State

November 16
Historic Resources, Board of
Historic Resources, Department of
Youth, Virginia Commission on

November 17
Air Pollution Control Board, State
Historic Resources, Board of
Historic Resources, Department of

November 29
Human Immunodeficiency Viruses, Joint Subcommittee Studying

December 3
Education, State Board of

December 7
† Agriculture and Consumer Services, Department of

December 8
Virginia Racing Commission

December 14
† Air Pollution Control Board, State
† Waste Management Board, Virginia

December 15

† Air Pollution Control Board, State
† Corrections, Department of
† Waste Management Board, Virginia

December 16
† Air Pollution Control Board, State
† Waste Management Board, Virginia
† Water Control Board, State

December 17
† Professional Counselors, Board of

December 20
Alcoholic Beverage Control Board

December 21
† Health Services Cost Review Council, Virginia

January 5, 1994
† Water Control Board, State

January 10
† Taxation, Department of
† Water Control Board, State

January 11
† Water Control Board, State

January 12
† Corrections, Department of

January 13
† Water Control Board, State

January 15
† Agriculture and Consumer Services, Department of
- Pesticide Control Board

January 24
† Lottery Department, State

Calendar of Events