

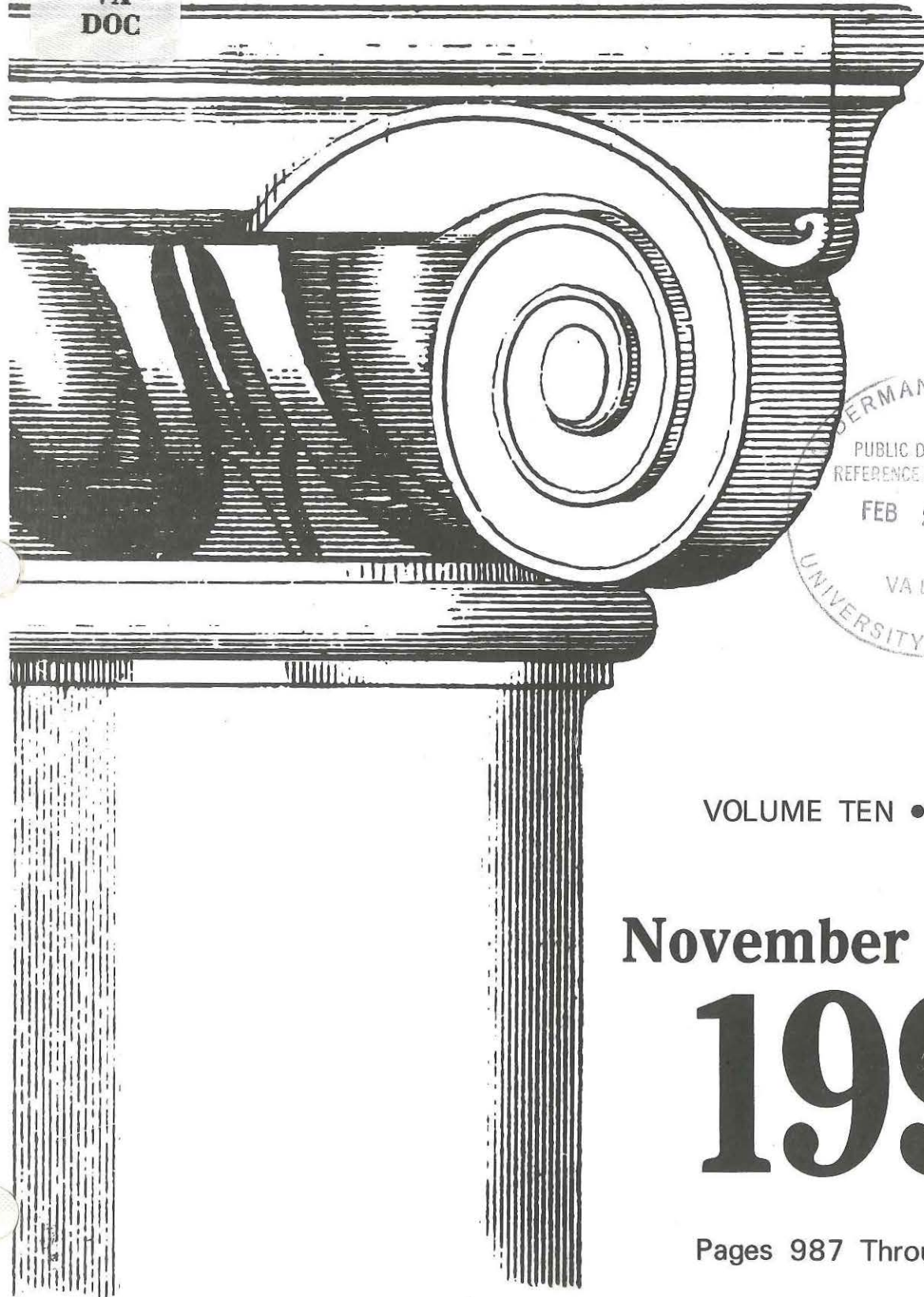
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THE VIRGINIA REGISTER

OF REGULATIONS

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

EMERGENCY REGULATIONS

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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Symbol Key †

† Indicates entries since last publication of the Virginia Register

BOARD FOR ACCOUNTANCY

Notice of Intended Regulatory Action

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

Notices of Intended Regulatory Action

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 (NO_x). 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 NO_x in the atmosphere come from emissions of electric utilities. Throughout the nation as of 1985, 70% of SO₂ emissions and 37% of NO_x emissions came from electric utilities. Reducing the total level of SO₂ and NO_x 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

Notices of Intended Regulatory Action

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

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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:

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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 alternative 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

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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.

V.A.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.

V.A.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.

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **Rules Relating to Compulsory Minimum Training Standards for Radar Operators**. The purpose of the proposed action is to establish the Rules Relating to Compulsory Minimum Training Standards for Radar Operators. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9-170(3a) of the Code of Virginia.

Written comments may be submitted until December 29, 1993 to L. T. Eckenrode, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219.

Contact: Paula Scott Dehetre, Staff Executive, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

V.A.R. Doc. No. R94-207; Filed November 5, 1993, 12:43 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.

Notices of Intended Regulatory Action

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

V.A.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.

V.A.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.

V.A.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 promulgating regulations entitled: **Guidelines For School Crime Lines**. The purpose of the proposed action is to provide a mechanism to receive, screen, and promote student reports of unlawful acts committed in school buildings or on school grounds or at school activities. Any local school board may develop a school crime line program as a joint, self-sustaining, cooperative alliance with law-enforcement authorities, the community, and the news media. Public hearings will be held during the public comment period and this information will be publicized through a press release.

Statutory Authority: § 22.1-280.2 of the Code of Virginia.

Written comments may be submitted until January 3, 1994.

Contact: Diane L. Jay, Grants Program Manager, Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23216-2120, telephone (804) 371-7582.

V.A.R. Doc. No. R94-255; Filed November 10, 1993, 10:41 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 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.

V.A.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 repealing regulations entitled: **VR 270-01-0042. Regulations Governing Contractual Agreements with Professional Personnel**. The

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purpose of the proposed action is to repeal this regulation and provide a section of newly developed proposed regulations to govern hiring and contractual agreements. The 1992 General Assembly required the Department of Education to study local school division hiring process and provide a report to the 1993 Session. A team of professionals studied hiring procedures for teachers and professional personnel in conjunction with a Department of Education study on the Revision of Teacher Contracts. The result of the study was a report entitled "Report On Contracts For Local School Personnel and Uniform Hiring Procedures For Teachers." The recommendations set forth in the report form the basis for the proposed regulations entitled "VR 270-01-0042:1, Regulations Governing the Employment of Professional Personnel," which are being published in the proposed section of the November 29 issue of The Virginia Register. As a result of the development of the new regulations, VR 270-01-0042, Regulations Governing Contractual Agreements with Professional Personnel, must be repealed. All of the major professional organizations participated as full team members in the development of the recommendations. Representatives from the Virginia Education Association, the Virginia Association of School Superintendents, the Virginia School Boards Association, and the Virginia Association of School Personnel Administrators were team members and their constituency groups provided input into the team process. In addition, representatives of rural, urban, and suburban school communities participated as full team members. The recommendations represent the result of a thorough and comprehensive study and the agreements made among the team members and other representatives indicated above. Considerable input was provided on the perspective of teachers through the representatives from the Virginia Education Association.

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

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

Written comments may be submitted until December 30, 1993.

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

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

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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.

V.A.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.

V.A.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

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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.

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:

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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.

V.A.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.

V.A.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.

V.A.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 355-35-200. Sanitary Regulations for Hotels** (Formerly VR 355-35-02). The purpose of the proposed action is to specify sanitation requirements for hotels and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

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

Written comments may be submitted until 5 p.m. on December 31, 1993.

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

V.A.R. Doc. No. R94-256; Filed November 9, 1993, 10:57 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 355-35-300. Sanitary Regulations for Summer Camps** (Formerly VR 355-35-03). The purpose of the proposed action is to specify sanitation requirements for summer camps and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

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

Written comments may be submitted until 5 p.m. on December 31, 1993.

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

V.A.R. Doc. No. R94-253; Filed November 9, 1993, 10:58 a.m.

† Notice of Intended Regulatory Action

Notices of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-400. Sanitary Regulations for Campgrounds** (Formerly VR 355-35-04). The purpose of the proposed action is to specify sanitation requirements for campgrounds and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

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

Written comments may be submitted until 5 p.m. on December 31, 1993.

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

V.A.R. Doc. No. R94-258; Filed November 9, 1993, 10:57 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 355-35-500. Regulations Governing Swimming Pools at Hotels, Motels, Campgrounds, Summer Camps and Related Facilities** (Formerly VR 355-35-05). The purpose of the proposed action is to specify improved sanitation requirements for the operation and maintenance of swimming pools at hotels, motels, campgrounds, summer camps and related facilities to protect public health and to establish up-to-date standards for these swimming pools. A public hearing will be held during the public comment period after the proposed regulations are published.

Statutory Authority: §§ 35.1-11, 35.1-13, 35.1-16 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on December 31, 1993.

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

V.A.R. Doc. No. R94-257; Filed November 9, 1993, 10:57 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.

V.A.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.

V.A.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.

Notices of Intended Regulatory Action

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 Pruet, 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: **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.

BOARD OF NURSING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider promulgating regulations entitled: **VR 495-04-1. Public Participation Guidelines**. The purpose of the proposed action is to replace emergency regulations which are in effect until June 27, 1994. The board does not intend to hold a public hearing since there have been no objections to the emergency public participation guidelines currently in effect. A hearing will be held if requested.

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

Written comments may be submitted until December 29, 1993.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

VA.R. Doc. No. R94-254; Filed November 10, 1993, 10:39 a.m.

BOARD OF OPTOMETRY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Optometry intends to consider promulgating regulations entitled: **VR 510-01-2. Public Participation Guidelines**. The purpose of the proposed action is to replace emergency Public Participation Guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation, formation, and promulgation process. The board intends to hold a brief public hearing on the proposed regulations during the comment period.

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

Written comments may be submitted until January 11, 1994.

Contact: Elizabeth Carter, Executive Director, Board of

Notices of Intended Regulatory Action

Optometry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

V.A.R. Doc. No. R94-188; Filed October 28, 1993, 3:29 p.m.

BOARD OF PROFESSIONAL COUNSELORS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider repealing regulations entitled: **VR 560-01-01. Public Participation Guidelines**. The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No 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 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider promulgating regulations entitled: **VR 560-01-01:1. 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 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9912.

V.A.R. Doc. No. R94-185; Filed November 2, 1993, 3:27 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.

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

BOARD OF PSYCHOLOGY

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider repealing regulations entitled: **VR 565-01-1. 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, 54.1-2400, and 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider promulgating regulations entitled: **VR 565-01-1:1. 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, 54.1-2400, and 54.1-3500 of the Code of Virginia.

Notices of Intended Regulatory Action

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913.

V.A.R. Doc. No. R94-183; Filed November 2, 1993, 3:28 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Social Services intends to consider amending regulations entitled: **VR 615-08-1. 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. Friedenber, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

V.A.R. Doc. No. R94-95; Filed October 19, 1993, 12:38 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 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. Friedenber, Legislative Analyst,

Bureau of Governmental Affairs, Division of Planning and Program Review, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

V.A.R. Doc. No. C94-64; Filed September 28, 1993, 3:57 p.m.

BOARD OF SOCIAL WORK

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Work intends to consider promulgating regulations entitled: **VR 620-01-3. 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, 54.1-2400, and 54.1-3700 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

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

V.A.R. Doc. No. R94-206; Filed November 5, 1993, 12:57 p.m.

BOARD OF VETERINARY MEDICINE

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Veterinary Medicine intends to consider promulgating regulations entitled: **VR 645-01-0:1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines adopted in June 1993 and to provide full opportunity for public participation in the regulation, formation and promulgation process. The board intends to hold a public hearing on the proposed regulations during the comment period.

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

Written comments may be submitted until December 29, 1993, to Terri Behr, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230-1717.

Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., Fourth Floor, Richmond, VA 23230-1717, telephone (804) 662-9915.

V.A.R. Doc. No. R94-259; Filed November 10, 1993, 10:32 a.m.

Notices of Intended Regulatory Action

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.

V.A.R. Doc. No. R94-92; Filed October 13, 1993, 11:47 a.m.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider repealing regulations entitled: **VR 670-01-1. Regulation Guidelines for Public Participation.** The purpose of the proposed action is to repeal regulations outdated by the 1993 amendments to the public participation requirements of the Administrative Process Act. Location and date of public hearing on the repeal of these regulations will be announced at a later date.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-229; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to promulgate regulations entitled: **VR 670-01-100. Public Participation Guidelines.**

The purpose of the proposed action is to implement regulations for public participation in accordance with the 1993 amendments to the public participation requirements of the Administrative Process Act. Location and date of public hearing on the proposed regulations will be announced at a later date.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-228; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-1. Regulation Governing Provisions of Services in Vocational Rehabilitation.** The purpose of the proposed action is to (i) establish maximum time requirements for determining client eligibility and completing the client grievance process; (ii) change financial eligibility requirements; (iii) expand order of selection; (iv) liberalize the minimum grade point average for college student sponsorship; and (v) specify visual acuity requirements for agency sponsored eye surgery. Numerous language changes will be proposed. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to James Taylor, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-230; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-2. Regulations Governing Provision of Services for the Infants, Children, and Youth Program.** The purpose of the proposed action is to amend the method used to calculate financial eligibility

Notices of Intended Regulatory Action

for eye examinations and glasses. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 22.1-217 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Glen Slonneger, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone, (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-231; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-3. Regulation Governing Provision of Services in Rehabilitation Teaching.** The purpose of the proposed action is to (i) augment regulations to incorporate expanded services and definitions; (ii) add a client grievance procedure; (iii) add financial participation guidelines; and (iv) clarify eligibility requirements.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Jane Ward, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-232; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider repealing regulations entitled: **VR 670-03-4. Provision of Independent Living Rehabilitation Services.** The purpose of the proposed action is to repeal regulations due to loss of federal funds to support a Center for Independent Living within a state agency. A public hearing on the proposed repeal of these regulations will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Jane Ward, Program Specialist, Department for

the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-233; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-5. Supervision of Administrative Regulations Governing Intake and Social Services.** The purpose of the proposed action is to (i) change age requirement for referral to program for infants, children, and youth; and (ii) delete section on income data collection. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: §§ 63.1-77 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Paige Berry, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-234; Filed November 9, 1993, 4:12 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-6. Regulations Governing Deaf-Blind Services.** The purpose of the proposed action is to change the name of the Independent Living and Rehabilitation Teaching programs in § 3.1. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Paige Berry, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or

Notices of Intended Regulatory Action

toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-235; Filed November 9, 1993, 4:13 p.m.

† Notice of Intended Regulatory Action

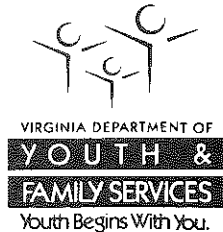
Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-7. Regulations Governing Low Vision.** The purpose of the proposed action is to clarify financial participation, remove the requirement of opening a case file, and remove the definition of bioptics. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993 to Marge Owens, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

V.A.R. Doc. No. R94-236; Filed November 9, 1993, 4:13 p.m.



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 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.

V.A.R. Doc. No. R94-174; Filed October 17, 1993, 9:17 a.m.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see information page.

Symbol Key

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

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN – Public Participation Procedures, Appendix E).

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

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. Section 9-6.14:7.1 requires each agency to develop, adopt and utilize public participation procedures for soliciting the input of interested parties in the formation and development of its regulations.

Purpose: The purpose of the regulation is to: (i) establish various provisions to ensure interested persons have the necessary information to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process; (ii) establish provisions to comply with the Administrative Process Act; and (iii) establish procedures which are consistent with those of the other agencies within the Natural Resources Secretariat. The proposal is being promulgated in response to the 1993 amendments to the Administrative Process Act.

Substance: The major provisions of the proposal are summarized below and amend the current public participation procedures as follows:

1. Add definitions to clarify the various types of hearings, proceedings and meetings associated with the regulatory adoption process.
2. Require an expanded Notice of Intended Regulatory Action (NOIRA) to include: (i) a description of the subject matter of the planned regulation; (ii) a description of the intent of the planned regulation; and (iii) a statement of intent as to whether the agency will hold at least one public hearing on the proposed regulation after it is promulgated for public comment by publication in The Virginia Register of Regulations.

3. Require an expanded Notice of Public Comment (NOPC) to include a statement identifying any locality particularly affected by the proposal.

4. Set out the methods for the identification and notification of interested persons, and the means of seeking input from interested persons or groups which the agency intends to use in addition to the NOIRA.

5. Specify the general policy for the use of standing advisory committees, ad hoc advisory groups, or consultation with groups and individuals registering interest in working with the agency to assist in the formation of the proposed regulation.

6. Require the agency to send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final action on the regulation.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the Department of Environmental Quality are discussed below.

1. **Public:** The public will have the advantage of (i) having the necessary information to comment on regulatory actions in a meaningful fashion during all phases of the regulatory process and (ii) having consistency with regard to the procedures used by the different environmental agencies and the amount and types of information made available to the public for their use in participating in the regulatory process. The disadvantage will be additional time and effort to explore and understand the issues.

2. **Department:** The department will have the advantage of meaningful and more useful input from the public during all phases of the regulatory process to use in the development of the regulation. The disadvantage to the department will be the additional time and effort to research and prepare some of the information required by the expanded NOIRA and NOPC.

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 proposal will impact any person or entity who wishes to participate in the development of regulations and comment on regulatory actions during all phases of the

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regulatory process. No fiscal impact on regulated entities or the public is expected from any proposed amendments to the procedures since the procedures only impose requirements on the department and board. The impact upon the department will be additional time and effort to research and prepare some of the information required by the expanded NOIRA and NOPC. The additional time and effort to prepare the information is not anticipated to be significant. It is expected that the cost to implement the regulation will be able to be absorbed within the current budget of the department.

Comparison with Federal Requirements: Most of the board's regulations are submitted to the U.S. Environmental Protection Agency for approval as part of various air quality plans required by the federal Clean Air Act. As such, they are subject to the public participation and adoption requirements specified in the Clean Air Act and EPA regulations. Most aspects of the state administrative procedures for the adoption of regulations are more stringent than the federal requirements. The federal requirements consist of a public hearing with 30 days notice and very little supporting documentation, as opposed to the state requirements for 60 days notice and extensive documentation. In one regard the federal requirements are more stringent, in that a hearing notice is required in the newspaper for each area affected by the regulation, as opposed to the state requirement for one newspaper notice statewide.

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 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
Abingdon Air Regional Office
121 Russell Road
Abingdon, Virginia 24210
Ph: (703) 676-5482

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

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

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

Department of Environmental Quality
Richmond 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 major provisions of the proposal are summarized below and amend the current public participation procedures as follows:

- 1. Add definitions to clarify the various types of hearings, proceedings and meetings associated with the regulatory adoption process.*
- 2. Require an expanded Notice of Intended Regulatory Action (NOIRA) to include: (i) a description of the subject matter of the planned regulation; (ii) a description of the intent of the planned regulation; and (iii) a statement of intent as to whether the agency will hold at least one public hearing on the proposed regulation after it is promulgated for public comment by publication in The Virginia Register of Regulations.*
- 3. Require an expanded Notice of Public Comment (NOPC) to include a statement identifying any locality particularly affected by the proposal.*
- 4. Set out the methods for the identification and notification of interested persons, and the means of seeking input from interested persons or groups which the agency intends to use in addition to the NOIRA.*
- 5. Specify the general policy for the use of standing advisory committees, ad hoc advisory groups, or consultation with groups and individuals registering interest in working with the agency to assist in the formation of the proposed regulation.*

6. Require the agency to send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final action on the regulation.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN - Public Participation Procedures, Appendix E).

§ 1. Definitions.

A. For the purpose of these regulations and subsequent amendments of 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 appendix, all terms not defined herein shall have the meaning given them in this section, unless otherwise required by context.

C. Terms defined.

"Formal hearing" means department processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) any combination thereof in the formation and development of regulations for department consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Public hearing" means an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held in conjunction with the Notice of Public Comment to afford persons an opportunity to submit views and data relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

§ 2. General.

A. The procedures in § 2 3 of this appendix shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This appendix does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

~~B. At the discretion of the board or the department, the procedures in § 2 of this appendix may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

~~C. B. The failure of any person to receive any notice or copies of any documents provided under these procedures shall not affect the validity of any regulation otherwise adopted in accordance with this appendix .~~

~~D. C. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:~~

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The board shall provide a written response to such petition within 180 days from the date the petition was received.

§ 2. § 3. Public participation procedures.

A. The department shall establish and maintain a list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the

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discretion of the department when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the board specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from at least five persons during the associated comment period indicating that the department should use the participatory approach, the department will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a Notice of Intended Regulatory Action whenever it considers the adoption, amendment or repeal of any regulation.

1. The Notice of Intended Regulatory Action shall include at least the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

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

b. d. A brief description of alternatives available, if any, to meet the need.

e. e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the notice of intended regulatory action development of any proposal .

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in *The Virginia Register of Regulations*.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall only be required when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The department shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the Notice of Intended Regulatory Action shall also include the date, not to be less than 30 days after publication in *The Virginia Register of Regulations*, time and place of the public meeting(s).

3. The public comment period for Notices of Intended Regulatory Action under this section shall be no less than 30 days after publication of the notice of intended regulatory action in *The Virginia Register of Regulations*.

E. The department shall disseminate the Notice of Intended Regulatory Action to the public via the following:

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

2. Distribution by mail to persons on the list established under subdivision A of this section.

F. After consideration of public input, the department may prepare complete the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established the participatory approach is being used , the draft proposed regulation shall be developed in consultation with such group the participants . A summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall be distributed to the ad hoc advisory group participants during the development of the draft proposed regulation. This summary or copies of the comments received in response to the Notice of Intended Regulatory Action shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish a Notice of Public Comment and the proposal for public comment.

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H. The Notice of Public Comment shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the proposal may be obtained, and the name, address, and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. 2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the department and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .

b. A statement of estimated impact:

(1) ~~Number~~ Projected number and types of regulated entities or persons affected.

(2) Projected cost , expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the department is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) Beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated entities that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Administrative Process Act to receive comments on the proposed regulation. (~~In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.~~) The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. *In those cases in which the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

I. The public comment period shall close no less than 60 days after publication of the Notice of Public Comment in The Virginia Register of Regulations.

J. The department shall disseminate the Notice of Public Comment to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.

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

K. The department shall prepare a summary of comments received in response to the Notice of Public Comment and the department's response to the comments received. *The department shall send a draft of the*

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summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The department shall submit the summary and the department response and, if requested, submit the full comments to the board. The summary, the department response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 3. § 4. Transition.

A. All regulatory actions for which a Notice of Intended Regulatory Action has been published in The Virginia Register of Regulations prior to January 1, 1993, (insert effective date of this appendix) shall be processed in accordance with the public participation guidelines in effect prior to January 1, 1993 Appendix E as revised by the emergency amendments in effect from June 29, 1993, to June 28, 1994, unless sooner modified or superseded by permanent regulations .

B. This appendix when effective shall supersede and repeal Appendix E as revised by the emergency amendments which became effective on June 29, 1993. All regulatory actions for which a Notice of Intended Regulatory Action has not been published in The Virginia Register of Regulations prior to January 1, 1993, (insert effective date of this appendix) shall be processed in accordance with this appendix.

VA.R. Doc. No. R94-240; Filed November 10, 1993, 8:56 a.m.

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

Title of Regulation: VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Public Hearing Date: November 30, 1993 - 2 p.m.

Written comments may be submitted until January 29, 1994.

(See Calendar of Events section for additional information)

Basis: The legal authority for the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects to promulgate these regulations is found in §§ 54.1-404 and 54.1-113 of the Code of Virginia.

Purpose: Pursuant to §§ 54.1-404 and 54.1-113 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects proposes to amend its regulations to adjust fees for application, examination and renewal. The board has also established permanent regulation for the registration of limited liability companies, and the implementation of minimum procedures for licensed land surveyors relating to property surveys showing physical improvements to real property. These regulations apply to approximately 24,000 licensed or registered architects, professional engineers, land surveyors, landscape architects and interior designers and the professional corporations and business entities that offer those services.

Substance: The amendments adjust application, examination fees in order to assure that the variance between revenues and expenditures for the board does not exceed 10% in any biennium as required by § 54.1-113 of the Code of Virginia. The examination fee adjustments are due to increases in the costs to the board of purchasing the national sole-source registration examinations for architects, professional engineers, land surveyors and landscape architects. These amendments also establish permanent regulation and new registration requirements for limited liability companies and professional limited liability companies in accordance with Chapters 12 and 13 of Title § 13.1 of the Code of Virginia as amended by the 1992 Virginia General Assembly. A previous regulation governing registration requirements for these entities was adopted by the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects through emergency regulation effective October 1992 pursuant to § 9-6.14.9 of the Code of Virginia as a result of the 1992 General Assembly act.

Issues: It is anticipated that the board will engage in review and revision of these regulations again within the next two years. Fee structures for all programs in the department are reviewed biennially for compliance with § 54.1-113 of the Code of Virginia. The proposed fee revisions are needed to ensure continued compliance with § 54.1-113 of the Code and to ensure sufficient revenues to cover expenses.

Estimated Impact: These regulations apply to approximately 24,000 licensed or registered architects, professional engineers, land surveyors, landscape architects and interior designers and the professional corporations and business entities that offer those services.

Costs are shown in the regulations in the form of fees for initial application, examination and renewal of licenses. The fees were established in accordance with § 54.1-113 of the Code of Virginia and were based on the current regulated population with approximately an 80% biennial

renewal rate. The fees have been set to ensure sufficient revenues to cover expenses. Examination fees were derived from the cost to the board to purchase the examinations from the national sole-source providers and a small administration fee to cover freight, postage, exam sites, proctors and vendor administration costs.

There are no additional anticipated costs to the agency. This program is fully supported through licensing, certification, registration and renewal fees.

Small businesses will feel only a minimal impact from these revisions. Sole proprietors will not experience an impact since they need only maintain their individual license to practice. Partnerships, corporations and other practicing entities are required to obtain the appropriate corporation or business entity registration in order to offer these regulated professional services.

Summary:

The regulation applies directly to approximately 24,000 licensed, certified or registered architects, professional engineers, land surveyors, landscape architects and interior designers and the professional corporations, limited liability companies and business entities that offer those professional services in Virginia. The substantive changes in the proposed regulation are increases in application, examination and renewal fees for architects, professional engineers, land surveyors and landscape architects; application and renewal fees for professional corporations, limited liability companies and business entities in order to assure the board's compliance with the requirements of § 54.1-113 of the Code of Virginia; implementation of new minimum procedures for land surveyors relating to conducting property location surveys that show physical improvements to real property and adding a new section which establishes registration requirements for limited liability companies and professional limited liability companies, formerly included in emergency regulations effective October 1992.

VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.

PART I. GENERAL DEFINITIONS.

§ 1.1. As used in these regulations, unless the context requires a different meaning:

"Direct control and personal supervision" shall be that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under his supervision.

"Full time" means 60% or more of a licensee's gainfully employed time.

"Good moral character" shall include, but shall not be limited to, compliance with the standards of practice and conduct as set forth in these regulations.

"Place of business" means any location which offers to practice or practices through licensed or certified professionals the services of architecture, professional engineering, land surveying and landscape architecture. A temporary field office set up for construction-related or land surveying services is not a place of business.

"Professional" means licensed architect, licensed professional engineer, licensed land surveyor, certified landscape architect or certified interior designer.

"Regulant" means licensee, certificate holder or registrant.

"Responsible charge" means the direct control and personal supervision of the practice of architecture, professional engineering, land surveying and certified landscape architecture.

PART II. GENERAL ENTRY REQUIREMENTS.

§ 2.1. Application requirements.

A. Fully documented applications with the noted exception shall be submitted by applicants seeking consideration for licensure, certification or registration with the appropriate fee(s) (check or money order only made payable to the Treasurer of Virginia) to be received in the board's office no later than 120 days prior to the scheduled examination. Applicants for the Fundamentals of Engineering examination enrolled in an ABET accredited curriculum who are within 12 months of completion of degree requirements may submit applications to be received in the board's office no later than 60 days prior to the scheduled examination. The date the completely documented application and fee are received in the board's office shall determine if an application has been received by the deadline set by the board. All applications should be completed according to the instructions contained herein. Applications are not considered complete until all required documents, including but not limited to references, employment verifications and verification of registration are received by the board. All applications, accompanying materials and references are the property of the board.

B. Applicants shall meet applicable entry requirements at the time application is made.

C. Applicants who have been found ineligible for any reason, may request further consideration by submitting in writing evidence of additional qualifications, training or experience. No additional fee will be required provided the requirements for licensure, certification or registration are met within a period of three years from the date the original application is received by the board. After such

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period, a new application shall be required.

D. The board may make further inquiries and investigations with respect to the qualifications of the applicant and all references, etc., to confirm or amplify information supplied. The board may also require a personal interview with the applicant.

E. Failure of an applicant to comply with a written request from the board for additional evidence or information within 60 days of receiving such notice, except in such instances where the board has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.

F. Applicants shall be held to the same standards of practice and conduct as set forth in these regulations.

G. National council information.

1. Architect applicants may obtain information concerning NCARB certification and the Intern Development Program from:

National Council of Architectural Registration Boards
(NCARB)
1735 New York Avenue, N.W., Suite 700
Washington, DC 20006
(202) 783-6500

2. Engineer and land surveyor applicants may obtain information concerning NCEES certificates from:

National Council of Examiners for Engineering and Surveying
(NCEES)
P.O. Box 1686
Clemson, South Carolina 29633-1686
(803) 654-6824

3. Landscape architect applicants may obtain information concerning CLARB registration from:

Council of Landscape Architectural Registration Boards
(CLARB)
Suite 110, 12700 Fair Lakes Circle
Fairfax, Virginia 22033
(703) 818-1300

4. Interior design applicants may obtain information concerning NCIDQ examination and certification from:

National Council for Interior Design Qualification
(NCIDQ)
118 East 25th Street 50 Main Street
New York, New York 10010 White Plains, New York
10606-1920
(212) 473-1188 (914) 948-9100

§ 2.2. Determining qualifications of applicants.

In determining the qualifications of an applicant for a license as an architect, a majority vote of only the architect members of the board shall be required. In determining the qualifications of an applicant for a license as a professional engineer, a majority vote of only the professional engineer members of the board shall be required. In determining the qualifications of an applicant for a license as a land surveyor, a majority vote of only the land surveyor members of the board shall be required. In determining the qualifications of an applicant for certification as a landscape architect, a majority vote of only the certified landscape architect members shall be required, and in determining the qualifications of an applicant for certification as an interior designer, a majority vote of only the certified interior designed members shall be required.

§ 2.3. Good standing of comity applicants.

An applicant licensed, certified or registered to practice architecture, professional engineering, land surveying, landscape architecture or interior design in another jurisdiction shall be in good standing in every jurisdiction where licensed, certified or registered, and shall not have had a license certificate or registration suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction prior to applying for licensure, certification or registration in Virginia.

§ 2.4. Transfer of scores to other boards.

The board, in its discretion and upon proper application, may forward the grades achieved by an applicant in the various examinations given under the board's jurisdiction to any other duly constituted registration board for use in evaluating such applicant's eligibility for registration within such board's jurisdiction or evaluation of such applicant's national certification. The applicant shall state his reason for requesting transfer and such transfer shall terminate the applicant's application pending before the board.

§ 2.5. Replacement of wall certificate.

Any licensee or certificate holder may obtain a replacement for a lost, destroyed, or damaged wall certificate only upon submission of a \$20 fee accompanied by a written request indicating that the certificate was lost, destroyed, or damaged.

§ 2.6. Modifications to examination administration.

Requests for modifications to the examination administration to accommodate physical handicaps must be made in writing and received in the board office no less than 120 days prior to the first day of the examination. Such a request must be accompanied by a physician's report or a report by a diagnostic specialist, along with supporting data, confirming to the board's satisfaction the nature and extent of the handicap. After receipt of the request from the applicant, the board may require that the

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applicant supply further information or that the applicant appear personally before the board, or both. It shall be the responsibility of the applicant to timely supply all further information as the board may require. The board shall determine what, if any, modifications will be made.

§ 2.7. Dishonored checks.

In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge specified in the regulations.

PART III.

QUALIFICATIONS FOR LICENSING OF ARCHITECTS.

§ 3.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$ 45	60
Renewal	75	80
ARE Exam (all divisions)	435	
Architect Registration Exam (ARE) (all divisions)		570
Division A	82	87
Division B written	67	87
Division B graphic	102	112
Division C	140	150
Division D/F	77	87
Division E	62	87
Division G	83	88
Division H	84	89
Division I	81	86
Out of State proctor		50
Dishonored checks		25

§ 3.2. Character.

Applicants must be of good moral character.

§ 3.3. Education.

A. All applicants shall obtain five years of professional

education or equivalent education credits. Education credits shall be calculated in accordance with Table I.

B. On or after January 1, 1993, All applicants shall hold a professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment.

§ 3.4. Experience.

A. All applicants shall have three years of training in the essential areas of architectural practice as defined below. Evidence shall be in the form of official records of a structured internship verified through the Intern Architect Development Program of the National Council of Architectural Registration Boards (NCARB) or a program approved by the board; or incorporated in the candidate's application and verified by employers. Experience shall include:

1. A minimum of 18 months in the area of design and construction documents directly related to the practice of architecture; and
2. A minimum of five months in the area of construction administration directly related to the practice of architecture; and
3. A minimum of three months in the area of office management directly related to the practice of architecture.

Training credits shall be calculated in accordance with Table I.

B. The Intern-Architect Development Program (IDP) shall be required of all applicants on or after January 1, 1993. An applicant shall be enrolled in IDP for a period of one year or more prior to submitting an application for examination in Virginia. An applicant submitting an application for examination on or after January 1, 1995, shall be enrolled in IDP for a period of two years or more. As of January 1, 1996, all applicants shall be enrolled in IDP for a period of three or more years prior to submitting an application for examination in Virginia. IDP training requirements shall be in accordance with Part H of Table I: NCARB standards, except that all applicants must have a minimum of 36 months training prior to submitting an application for examination.

§ 3.5. References.

Eligibility for licensure is determined in part by the applicant's demonstrated competence and integrity to engage in the practice of architecture. Applicants shall submit three references with the application, all of whom are licensed architects in a jurisdiction or territory of the United States. These professionals shall have personal knowledge of the applicant's architectural experience and have known the applicant for at least one year.

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References shall be current for one year.

§ 3.6. Examination.

A. All applicants for original licensing in Virginia are required to pass an Architect Registration Examination (ARE) after meeting the education and training requirements as provided in these regulations.

B. The Virginia board is a member of the National Council of Architectural Registration Boards (NCARB) and as such is authorized to administer the NCARB examinations.

C. Grading of the examination shall be in accordance with the national grading procedure administered by NCARB. The board shall adopt the scoring procedures recommended by NCARB.

D. The Architect Registration Examination (ARE) will be offered at least once a year at a time designated by the board.

E. The board may approve transfer credits for parts of the examination taken prior to the 1983 ARE. Transfer of credits will be in accordance with national standards.

F. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

G. Examinees will be given specific instructions as to the conduct of each division of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

H. Scores.

Examinees will be advised only of passing or failing the examination. Only the board and its staff shall have access to examination papers, scores and answer sheets.

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 3.7. License by comity.

A. Any person licensed in another state, jurisdiction or territory of the United States or province of Canada may be granted a license without written examination, provided that:

1. The applicant meets all the requirements for licensing in Virginia or possesses an NCARB certificate; and

2. The applicant holds a currently active valid license in good standing in another state, jurisdiction or territory of the United States or province of Canada.

3. Applicants who were registered in their jurisdiction of original licensure without IDP must submit a verified record of experience in accordance with § 3-4

B. Applicants licensed in foreign countries *other than a province of Canada* may be granted a license in Virginia based on an NCARB certificate.

C. Anyone licensed prior to January 1, 1993, shall have their education and experience evaluated in accordance with the standard in effect in Virginia at the time of original licensure in their original jurisdiction of licensure.

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TABLE I
REQUIREMENTS FOR ARCHITECTURAL LICENSURE

PART I EDUCATION AND TRAINING REQUIREMENTS RELEASED: JANUARY, 1990; THIS EDITION SUPERSEDES ALL PREVIOUS TABLES OF EQUIVALENTS, REQUIREMENTS.						
INTERN-ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS REFER TO PART II FOR THEIR TRAINING REQUIREMENTS. (Complete infor- mation may be obtained from NCARB.)						
Education Credits			Training Credits			
First 2 Years	Succeeding Years	Max. Credit Allowed	First 2 Years	Succeeding Years	Max. Credit Allowed	Max. Credit Allowed
A-1 First professional degree in architecture, or credits toward the first professional degree, where the degree program has been approved by the board not later than two years after termination of enrollment.						
75%	100%	5 years				
A-2 First professional degree in architecture, or credits toward that degree, where the degree program has not been approved by the board.						
75%	75%	4 years				See B-1,2
A-3 Bachelor degree, or credits toward that degree, in architectural engineering, archi- tectural technology, or in civil, mechanical, or electrical engineering, or in interior architecture, each of the above being approved by the board.						
50%	75%	3 years				
A-4 Any other bachelor degree.						
		2 years				
A-5 Diversified experience in architecture as an employee in the offices of licensed architects.						
50%	50%	5 years	100%			no limit
A-6 Diversified experience in architecture as a principal practicing in the office of a licensed architect with a verified record of substantial practice.						
50%	50%	5 years	100%			no limit
A-7 Diversified experience in architecture as an employee of an organization (other than offices of registered architects) when the experience is under the direct supervision of a registered architect.						
50%	50%	4 years	100%			2 years
A-8 Experience directly related to architecture, when under the direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, interior designer, or planner.						
		0	50%			1 year

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~~A-9 Experience, other than A-5, A-6, A-7 or A-8 experience, directly related to on-site building construction operations or experience involving physical analyses of existing buildings 0 50% 6 months~~

~~A-10 Other Education or Training Experience (see B-3.2)~~

~~EXPLANATION OF REQUIREMENTS~~

~~B-1 Education Credits Education Credits shall be subject to the following conditions:~~

- ~~B-1 .1 No education credits may be earned prior to graduation from high school.~~
- ~~.2 Applicants with the degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program. Applicants without the degree specified in A-1 or A-2 may not accumulate more than 3 years of education credits in the aggregate from all degree programs.~~
- ~~.3 32 semester credit hours or 48 quarter credit hours are considered to be 1 year. Fractions of a year of one-half or greater will be considered one-half year, and smaller fractions will not be counted.~~
- ~~.4 Foreign education credits will be granted only under classifications A-2 and A-4. Any cost of translation and evaluation will be borne by the applicant.~~

~~B-2 Training Credits~~Part I Training credits shall be subject to the following conditions:

- ~~B-2 .1 No training credits may be earned prior to accumulating 2 1/2 education credits.~~
- ~~.2 Every applicant must earn at least one year of training credit under A-5 or A-6 and must earn it after earning 5 years of education credits, gaining Diversified Experience in architecture as defined under the IDP Program as administered by NCARB as an employee in the offices of licensed architects or as a principal practicing in the offices of a licensed architect.~~
- ~~.3 No credit used as an education credit may be used as a training credit.~~
- ~~.4 Organizations will be considered to be "offices of registered architects": (a) the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered architect, and (b) the organization is not engaged in construction, and (c) the organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.~~
- ~~.5 An organization (or an affiliate) is engaged in construction if it customarily engages in either of the following activities:
 - ~~(a) providing labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation.~~
 - ~~(b) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.~~~~
- ~~.6 A person practices as a "principal" by being a registered architect and the person in charge of the organization's architectural practice, either alone or with other registered architects.~~
- ~~.7 In evaluating training credits the Board may, prior to licensure, require the applicant to substantiate training experience by comparing this experience to the training requirements as indicated for the Intern Architect Development Program (IDP). See IDP Training Requirements below.~~

B-3 General Evaluation Criteria

- ~~B-3.1 To earn full education or training credits under A-5, A-6, A-7, A-8 and A-9 an applicant must work at least 35 hours per week for a minimum period of ten consecutive weeks under A-5 or 6 consecutive months under A-6, A-7, A-8 or A-9. An applicant may earn one-half the credit specified under A-5 for work of at least 20 hours per week in periods of 6 or more consecutive months; no credit will be given for part-time work in any category other than A-5.~~
- ~~.2 Other education and training may be substituted for the requirements outlined above, only insofar as the board considers them to be equivalent to the required qualifications.~~
- ~~.3 In evaluating credits, the Board may, prior to registration, require substantiation of the quality and character of the applicant's experience, notwithstanding the fact that the applicant has complied with the technical education and training requirements set forth above.~~

PART II TRAINING REQUIREMENTS FOR INTERN-ARCHITECT DEVELOPMENT PROGRAM (IDP) APPLICANTS

IDP Applicant Defined An IDP applicant for registration is a person who has completed the IDP training requirements as administered by NCARB.

Training An IDP Applicant must acquire a total minimum of 700 value units (VU's) and a full 36 months of approved training to satisfy the training requirements. One VU equals 8 hours of acceptable activity. See Part I for acceptable experience descriptions.

~~The following chart lists the IDP training categories and areas and the value unit requirements for each.~~

CATEGORY A	CATEGORY C
Design and Construction Documents	Management
1. Programming--Client Contact.....10	13. Project Management.....15
2. Site and Environmental Analysis.....10	14. Office Management.....10
3. Schematic Design.....15	<u>Minimum Total VU's Required</u> 35*
4. Building Cost Analysis.....10	*The differences between the minimum total
5. Code Research.....15	VU's differences between the minimum total
6. Design Development.....40	VU's required in each of categories A, B
7. Construction Documents.....145	and C and the sum of the minimums required
8. Specifications & Materials Research.....15	for each training area within the category
9. Documents Checking and Coordination.....15	must be acquired by earning VU's from
<u>Minimum Total VU's Required</u> 350*	training areas within the same category.
CATEGORY B	CATEGORY D
Construction Administration	Related Activities
10. Bidding & Contract Negotiation...10	15. Professional and Community Service...10
11. Construction Phase-Office.....15	<u>Minimum Total VU's Required</u> 10*
12. Construction Phase-Observation...15	This listing of required minimums in
<u>Minimum Total VU's Required</u> 70*	categories A, B, C and D totals 465 VU's,
	allowing for 235 additional VU's to be
	acquired in any of the listed categories.
	All of the 235 additional VU's may be
	acquired in one category or distributed
	among the categories.

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Explanation of Requirements

- ~~1. VU's in categories A, B and C may be acquired only if the applicant meets the time requirements of B-3.1 of Part I. VU's may be acquired in category D only if the activity is substantial and continuous.

Full VU credit is earned for acceptable full-time employment in the settings described in A-8 and A-9 of Part I, and for acceptable part-time employment in the setting described in A-5 of Part I.~~
- ~~2. No VU's may be acquired prior to satisfactory completion of:
 - ~~1. three years in an NAAB accredited bachelor degree program, or~~
 - ~~2. the third year of a four year pre-professional degree program in architecture accepted for direct entry to an NAAB accredited master's degree program, or~~
 - ~~3. one year in an NAAB accredited master's degree program, or~~
 - ~~4. 96 semester credit hours as evaluated by EESA in accordance with NCARB Circular of Information No. 3 of which no more than 60 hours can be in the general education category or~~
 - ~~5. five education credits as of June 30, 1984.~~
~~32 semester credit hours or 48 quarter credit hours shall equal one year in an academic program.~~~~
- ~~3. A master's or doctoral degree in architecture (except where the degree is the first professional degree) qualifies for 235 VU's under category D.~~
- ~~4. An IDP applicant may earn VU's by completing NCARB approved supplementary education programs; credit to be in accordance with a table of credits established by NCARB. Supplementary education cannot be used to satisfy the minimum VU requirements in training areas 1-14. No VU's may be earned for supplementary education prior to meeting the requirements of A-1 of Part I or while enrolled in a second professional degree program in architecture.~~
- ~~5. The VU's which may be earned under paragraph 3 and 4 may not exceed in the aggregate 235 VU's.~~
- ~~6. To satisfy categories A and B of the training requirements, VU's (including VU's earned from supplementary education) in these categories must be acquired when employed in the settings described in A-5 or A-7 of Part I.~~
- ~~7. A minimum of 235 VU's must be acquired in the setting described in A-5 of Part I after having satisfied A-1.~~
- ~~8. In evaluating training, NCARB may, prior to certification, require substantiation of the quality and character of the training notwithstanding the fact that the IDP applicant has complied with the technical training requirements set forth above.~~
- ~~9. For detailed descriptions of the IDP training categories and supplementary education requirements, see IDP Guidelines available through NCARB.~~

PART IV.
QUALIFICATIONS FOR LICENSING OF
PROFESSIONAL ENGINEERS.

Dishonored check

25

§ 4.1. Definitions.

The following definitions shall apply in the regulations relating to the licensing of professional engineers.

"*ABET*" means the Accreditation Board for Engineering and Technology.

"*Approved engineering curriculum*" means an engineering curriculum of four years or more approved by the board. ABET approved engineering curricula are approved by the board.

"*Approved engineering technology curriculum*" means an ABET approved engineering technology curriculum.

"*Approved professional experience*" means a specific record of acceptable professional experience which the board, in its discretion, judges to be pertinent in acquiring engineering skills, on engineering projects of a grade and character indicating that the applicant may be competent to practice engineering.

"*Engineering examination*" means an eight-hour written examination in the Fundamentals of Engineering and an eight-hour written examination in the Principles and Practice of Engineering where required.

"*Engineer-in-training (EIT) designation*" means the designation of an applicant who completes any one of several combinations of education, or education and experience, and passes the Fundamentals of Engineering examination.

§ 4.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Fundamentals of Engineering

FE Application \$ 25

Principles of Engineering

PE Application 65 100

Renewal 65 70

FE Examination 45 55

PE Examination ~~100 110 (7-1-92)~~ 130

PE Exam rescore 50

FE/PE Out of State Proctor 50

Oral Examination 100 (This fee will be deleted as of July 1, 1993)

§ 4.3. Character.

Applicants must be of good moral character.

§ 4.4. Requirements for Fundamentals of Engineering (FE) exam.

Applicants who are enrolled in an ABET accredited curriculum and are within 12 months of completion of degree requirements are eligible for the FE exam. Applications must be accompanied by a certificate of good standing from the dean of the engineering school.

All other applicants must meet the eligibility requirements in § 4.5 below.

§ 4.5. Requirements for engineer-in-training (EIT) designation.

The minimum education, experience and examination requirements for the engineer-in-training (EIT) designation are as follows:

1. An applicant who has graduated from an approved engineering or approved engineering technology curriculum of four years or more and has passed an eight-hour written examination in the Fundamentals of Engineering; or
2. An applicant who has graduated from a nonapproved engineering curriculum or a related science curriculum of four years or more, with a specific record of two or more years of approved professional experience and has passed the Fundamentals of Engineering examination; or
3. An applicant who has graduated from a nonapproved engineering technology curriculum or who has not graduated from an engineering or related science curriculum of four years or more but who, in the judgment of the board, has obtained the equivalent of such graduation as described, by self-study or otherwise, and has acquired six additional years of approved professional experience and has passed the Fundamentals of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience.

The engineer-in-training (EIT) designation shall remain valid indefinitely.

§ 4.6. Requirements for professional engineering license.

The minimum education, experience and examination requirements for licensing as a professional engineer are as follows:

1. An applicant who has graduated from an approved engineering curriculum, has passed the Fundamentals

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of Engineering examination or an equivalent exam, has a specific record of at least four years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination, provided, however, any applicant who has been awarded both an ABET accredited undergraduate engineering degree and a doctorate degree in engineering from an engineering curriculum which is ABET accredited at the undergraduate level may have the Fundamentals of Engineering examination waived; or

2. An applicant who has graduated from a nonapproved engineering curriculum, a related science curriculum of four years or more, or an approved engineering technology curriculum, who has passed the Fundamentals of Engineering examination or an equivalent exam, has acquired a specific record of at least six years of progressive approved professional experience, and has passed the Principles and Practice of Engineering examination; or

3. An applicant who has not graduated from an approved engineering curriculum of four years or more but who has obtained the equivalent of such graduation by self-study or otherwise, has passed the Fundamentals of Engineering exam or an equivalent examination, has acquired 10 years of approved professional experience, and has passed the Principles and Practice of Engineering examination. Experience used to determine educational equivalency shall not be used in satisfying professional experience; or

4. An applicant who has graduated from an engineering, engineering technology or related science curriculum of four years or more, who has acquired a specific record of 20 years or more of approved progressive professional experience on engineering projects of a grade and character which the board judges to be pertinent to acquiring professional skills, such that the applicant may be competent to practice engineering, and has passed the examination in the Principles and Practice of Engineering ; or .

5. An applicant who has graduated from an engineering, engineering technology, or related science curriculum of four years or more, and who has acquired a specific record of 20 years or more of approved progressive professional experience on engineering projects of grade and character which the board judges to be pertinent to acquiring professional skills, demonstrating that the applicant is eminently qualified to practice engineering, shall pass an oral examination which indicates to the board that the applicant is eminently qualified to practice engineering. If the board has any doubt concerning an applicant's eminent qualifications, the applicant shall be reclassified as an examination candidate.

Applications from individuals qualifying under this section will be accepted by the board until July 1, 1993.

All applicants for oral examination must qualify on or before July 1, 1993.

§ 4.7. References.

A. References for Fundamentals of Engineering examination.

Applicants for the Fundamentals of Engineering examination only shall provide one reference from a professional engineer, or from the dean of the engineering school or a departmental professor in the school attended by the applicant, or an immediate work supervisor. Any reference provided shall be from a person who has known the applicant for at least one year. References may not also verify professional experience.

B. References for Principles and Practice of Engineering examination.

To be eligible for admission to the Principles and Practice of Engineering examination, an applicant must indicate competence and integrity to engage in the engineering profession by submitting three references with the application, all of whom shall be licensed professional engineers in a state or territory of the United States. The professional engineers providing the references shall have personal knowledge of the applicant's engineering experience and shall have known the applicant for at least one year. References shall be no more than one year old at the time the applicant is approved to take the requisite examination. References may not also verify professional experience.

§ 4.8. Education.

Any applicant who has ~~attended~~ *earned a degree from* an institution ~~not located in~~ *outside* the United States shall have ~~his~~ *the* degree evaluated by an educational *credential* evaluation service or by ABET if credit for such education is sought ; , *unless the applicant earned an equivalent or higher level engineering degree from a United States institution accredited by ABET.* The board reserves the right to reject any evaluation submitted by the applicant.

§ 4.9. Training and experience.

Professional engineering training and experience shall be progressive in complexity and based on a knowledge of engineering mathematics, physical and applied sciences, properties of materials, and fundamental principles of engineering design, provided:

1. In general, experience in sales, drafting, estimating, field surveying, nonengineering military service, and inspection are considered nonqualifying;

2. Engineering experience gained by graduate engineering study or by engineering teaching as an instructor or higher in an institution approved by the board may be deemed professional experience;

3. Engineering experience gained during a board-approved co-op program may be deemed professional experience to a maximum of one year of credit;

4. The board, in its sole discretion, may permit partial credit, not to exceed 1/4 of that required, for approved professional experience obtained prior to graduation from an engineering curriculum.

§ 4.10. Language and comprehension.

Every applicant applying for licensure as a professional engineer shall be able to speak and write English. Such an applicant from a non-English speaking country or a country wherein the primary language is other than English shall submit to the board a TOEFL (Test of English as a Foreign Language) score report with a minimum score of 560, and a TSE (Test of Spoken English) score report with a minimum score of 255. Score reports shall not be over two years old at the time of application.

§ 4.11. Examinations.

A. The Virginia board is a member of the National Council of Examiners for Engineering and Surveying (NCEES) and as such is authorized to administer the NCEES examinations.

B. The Fundamentals of Engineering examination consists of an eight-hour test period on the fundamentals of engineering, and is given semiannually at times designated by the board.

C. The Principles and Practice of Engineering examination consists of an eight-hour test period on applied engineering and is given semiannually at times designated by the board.

D. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

E. A candidate eligible for admission to both parts of the examination must first successfully complete the fundamentals of engineering examination before being admitted to the principles and practice of engineering examination.

F. Examinees will be given specific instructions as to the conduct of each examination at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. The oral exam shall consist of a review of the

engineering background and examples of the work of the professional engineering candidate in the presence of the Professional Engineer Section of the board. This examination may encompass any facts appearing in the application and supporting papers of the candidate and such direct evidence as the candidate may desire to present to the board to substantiate the breadth and depth of professional engineering experience, primarily in experience in engineering design and analysis.

1. Substantiating evidence shall be in the form of drawings, sketches, reports, specifications, calculations, published articles, textbooks, or other suitable information demonstrating the engineering experience of the candidate. Based upon this information, the candidate will be subject to questions regarding principles of engineering followed in the execution of such work.

2. The candidate shall demonstrate that the experience record is of a professional level and shall leave no doubt as to the ability to protect the public in the practice of engineering. Failure to demonstrate this ability shall result in reclassification.

H. Grading.

G. Grading of the examinations shall be in accordance with national grading procedures established by NCEES.

Each part of the written examination will have a value of 100. A passing score shall be 70 and above. Candidates will be notified of passing or failing and their actual scores.

I. H. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

J. Examination reviews.

I. The Fundamentals of Engineering examination may not be reviewed by the candidates. Examination scores are final and are not subject to change.

Upon written request to the board within 30 days of receiving exam results, candidates for the Principles and Practice of Engineering examination will be permitted to review only their own failed examination. Score appeals may be accepted in accordance with board policy.

§ 4.12. License by comity.

A person holding a license to engage in the practice of engineering, issued to the applicant by another state, territory or possession of the United States, *Canada* or the District of Columbia, based on requirements that do not conflict with and are at least as vigorous as these regulations and supporting statutes of this board, may be licensed without further examination. No person shall be so licensed, however, who has not passed a written

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examination in another jurisdiction which is substantially equivalent to that administered by the board.

PART V. QUALIFICATIONS FOR LICENSING AND STANDARDS OF PROCEDURE FOR LAND SURVEYORS.

§ 5.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application for Fundamentals of Surveying	\$ 60	105
Application for Principles of Surveying	95	130
Renewal	155	180
Fundamentals of Surveying Examination	65 80 (7-1-92)	120
Principles of Surveying Examination	65 85 (7-1-92)	125
Principles (AM) and/or Colonial Domain Exam	65	
Virginia State Examination	30	75
Application for Land Surveyor B	95	140
Examination for Land Surveyor B	35	45
Out of State Proctor		50
Dishonored check		25

§ 5.2. Character.

Applicants must be of good moral character.

§ 5.3. Requirements for land surveyor-in-training.

The education or experience, or both, and examination requirements for land surveyor-in-training status are as follows:

1. An applicant who has graduated from a surveying or surveying technology curriculum of four years or more approved by the board as being of satisfactory standing shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

2. An applicant who has graduated from a curriculum related to surveying of four years or more as approved by the board and with a specific record of two years of progressive, approved professional experience in land surveying shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the

applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

3. An applicant who has ~~graduated from an~~ *earned at least a four-year bachelors degree in a field* unrelated to surveying ~~curriculum of four years or more as acceptable to~~ *may be approved by* the board with a specific record of four years of approved professional experience in land surveying of which three of these years shall be progressive; *The applicant* shall be admitted to an eight-hour examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

4. An applicant who has graduated from a surveying curriculum of two years or more approved by the board with a specific record of six years of approved professional experience in land surveying of which four of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

5. An applicant who has successfully completed a survey apprenticeship program approved by the board with at least 480 hours of surveying related classroom instruction with a specific record of eight years of approved professional experience in land surveying of which six of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

6. An applicant who has graduated from high school with evidence of successful completion of courses in algebra, geometry and trigonometry with a specific record of ten years of approved professional experience in land surveying of which eight of these years shall be progressive, shall be admitted to an eight-hour written examination in the Fundamentals of Land Surveying. Applicants who have accumulated college credits may apply credit hours approved by the board to help meet the experience requirement. One year of experience credit will be given for 40 semester hours of approved college credit. Upon passing such examination, the applicant shall be enrolled as a land surveyor-in-training, if ~~he~~ *the applicant* is otherwise qualified.

§ 5.4. Requirements for a licensed land surveyor.

A land surveyor-in-training with a specific record of four years of approved professional experience, of which a minimum of three years of progressive experience has

been on land surveying projects under the supervision of a licensed land surveyor, shall be admitted to ~~an eight-hour~~ *a six-hour* written examination in the Principles and Practice of Land Surveying *and a two-hour Virginia state examination*. Upon passing such examination the applicant shall be granted a license to practice land surveying, provided the applicant is otherwise qualified.

§ 5.5. Requirements for a licensed land surveyor B.

A. An applicant shall hold a valid license as a land surveyor and present satisfactory evidence of two years of progressive professional experience in land surveyor B professional land surveying, as defined in § 54.1-408 of the Code of Virginia, under the supervision and direction of a licensed land surveyor B or professional engineer.

B. An applicant shall also present satisfactory evidence of having passed college level courses in hydraulics, acceptable to the board.

C. An applicant shall pass an eight-hour written examination as developed by the board. Upon passing such examination the applicant shall be granted a license as a Land Surveyor B, if he is otherwise qualified.

§ 5.6. Education.

Any applicant who has attended an institution not located in the United States shall have his degree evaluated by an education evaluation service if credit for such education is sought. The board reserves the right to reject any evaluation submitted by the applicant.

§ 5.7. Experience standards.

A. "Approved professional experience" means diversified training in land surveying under the supervision and direction of a licensed land surveyor. This experience shall have been acquired in positions requiring the exercise of independent judgment, initiative and professional skill in the office and field. Experience may be gained either prior to or after education is obtained.

B. An applicant shall submit written verification from a licensed land surveyor of work experience from each employment engagement utilized as professional experience on forms provided by the board.

§ 5.8. Examinations.

A. The examination for land surveying under § 54.1-400 of the Code of Virginia shall consist of two parts, each part being of eight hours duration. Part I shall consist of an eight-hour examination in the Fundamentals of Land Surveying. Part II shall consist of a ~~four-hour~~ *six-hour* examination in the Principles and Practice of Land Surveying; a ~~three-hour Colonial Domain examination~~; and a ~~one-hour~~ *two-hour* Virginia state examination. These examinations shall be given semiannually at times designated by the board.

B. The examination for land surveying under § 54.1-408 of the Code of Virginia (Land Surveyor B) shall be of eight hours duration and shall be given annually at a time designated by the board.

C. Unless otherwise stated, applicants approved to sit for an examination must register and submit the required examination fee to be received in the board office at a time designated by the board. Applicants not properly registered shall not be allowed into the examination site.

D. Grading.

D. Candidates shall be notified of passing or failing but shall not be notified of actual scores. Only the board and its staff shall have access to examination papers, scores and answer sheets. Examinations may not be reviewed.

1. Part I of the written examination shall have a value of 100. The passing grade shall be 70 or above.

2. Each portion of the Part II of the written examination shall have a value of 100. The passing grade shall be 70 or above.

3. For the Land Surveyor B examination, each applicant must obtain a minimum passing grade of 75 out of 100 for the entire eight-hour examination.

E. Reexamination.

Upon payment of a reexamination fee, an applicant may retake parts of the written examination which may have been failed. Should the applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 5.9. Licensure by comity.

A person holding a license to engage in the practice of land surveying issued on comparable qualifications from a state, territory or possession of the United States and experience satisfactory to the board, will be given comity consideration. Full credit will be given to an applicant who has passed the NCEES examinations for surveyors in other jurisdictions as required in Virginia. However, the applicant may be required to take such examinations as the board deems necessary to determine his qualifications, but in any event, ~~he~~ *the applicant* shall be required to pass a written Virginia State examination of not less than ~~one hour~~ *two hours* in duration. The examination shall include questions on law, procedures and practices pertaining to land surveying in Virginia.

§ 5.10. Minimum standards and procedures for land boundary surveying practice.

The following minimum standards and procedures are to be used *for boundary surveys performed* in the Commonwealth of Virginia. The application of the professional's seal ~~and~~, signature *and date* as required by

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these regulations shall be evidence that the boundary survey or other land survey to be used for conveyance of title or mortgage purposes is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures.

A. Research procedure.

The professional shall search the land records for the proper description of the land to be surveyed and obtain the description of adjoining land as it pertains to the common boundaries. The professional shall have the additional responsibility to utilize any other available data pertinent to the survey being performed from any other source that is known. Evidence found, from all sources, shall be carefully compared with that located and found in the field survey in order to establish aid in the establishment of the correct boundaries of the land being surveyed. *The professional shall clearly note any inconsistency found in the common boundaries between the land being surveyed and the adjoining land.* It is not the intent of this regulation to require the professional to research the question of title or encumbrances on the land involved.

B. Minimum field procedures.

1. Angular measurement. Angle measurements made for traverse or boundary survey lines will be made by using a properly adjusted transit type instrument which allows a direct reading to a minimum accuracy of 30 seconds of arc or metric equivalent. The number of angles turned at a given station or corner will be the number which, in the judgment of the professional, can be used to substantiate the average true angle considering the condition of the instrument being used and the existing field conditions.

2. Linear measurement. Distance measurement for the lines of traverse or *lines of the boundary surveys survey* shall be made with metal tapes which have been checked and are properly calibrated as to incremental distances, or with properly calibrated electronic distance measuring equipment following instructions and procedures established by the manufacturer of such equipment. All linear measurements shall be reduced to the horizontal plane and other necessary corrections performed before using for computing purposes.

3. Field traverse and boundary closure. The maximum permissible error of closure for a field traverse in connection with a boundary survey located in a rural area shall be one foot *part in 5,000 feet or metric equivalent of perimeter length 10,000 (1/10,000)*. The attendant angular closure shall be that which will sustain the ~~1/5,000 feet~~ *one part in 10,000 (1/10,000) maximum error of closure*. The maximum permissible error of closure for a traverse in connection with a boundary survey located in an urban area shall be one foot in 10,000 feet or metric equivalent of

perimeter length part in 20,000 (1/20,000). The attendant angular closure shall be that which will sustain the ~~1/10,000 feet~~ *one part in 20,000 (1/20,000) maximum error of closure*.

4. Monumentation. *As a requisite for completion of the work product, each boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes of direction on the boundary with the exceptions of meanders, such as meanders of streams, tidelands, lakes, swamps and prescriptive road rights-of-way; and each such monument, other than a natural monument, shall, when feasible, be identified by a temporary witness stake (which may be wooden). Where it is not feasible to set actual corners, appropriate reference monuments shall be set, preferably on line, and the location of each shall be shown on the plat or map of the boundary.*

All boundaries, both exterior and interior, of the original survey for any division or partition of land shall be monumented in accordance with the provisions of this subdivision, when such monumentation is not regulated by the provisions of a local subdivision ordinance.

C. Office procedures.

1. Computations. The computation of field work data shall be accomplished by using the mathematical routines that produce closures and mathematical results that can be compared with descriptions and data of record. Such computations shall be used to determine the final boundary of the land involved.

2. Plats and maps. The following information shall be shown on all plats or maps, or both, used to depict the results of the boundary survey:

a. The title of the boundary plat identifying the land surveyed and showing the district and county or city in which the land is located *and scale of drawing*.

b. The ~~owner's name~~ *name of owner of record* and deed book referenced where the acquisition was recorded.

c. Names of all ~~adjacent owners~~ *adjoining owners of record with deed book references*, or subdivision lot designations.

d. Names of highways and roads with route number, *and widths of right-of-way, or distance to the center of the physical pavement and pavement width, name of railroads, streams adjoining or running through the land, and other prominent or well-known objects or areas which are informative as to the location of the boundary survey - including but not limited to a distance to the nearest road intersection, or prominent or well-known object. In*

cases of remote areas, a scaled position with the latitude and longitude must be provided.

e. Bearings of all property lines *and meanders* to nearest 10 seconds of arc , or metric equivalent.

f. Distances of all property lines *and meanders* to the nearest one hundredth (.01) of a foot or metric equivalent.

g. Area to the nearest hundredth (.01) of an acre or metric equivalent for rural located surveys.

h. Area to the nearest square foot or ~~decimal~~ *thousandth (0.001)* of an acre or metric equivalent for urban located surveys.

i. North arrow and source of meridian used for the survey.

j. On interior surveys, a reference *bearing and distance* to a property corner of an adjoining owner.

k. Tax map designation of parcel number if available.

l. ~~Each~~ *Description of each monument found and each monument set by the professional.*

m. A statement that the boundary survey shown is based on a current field survey. *The application of the land surveyor's seal, signature and date shall constitute compliance with all the current standards of a boundary as of the date of the application of signature unless otherwise clearly stated in the title of the plat that it is to be construed otherwise.*

n. If the land boundaries shown on the plat are the result of a compilation from deed or plats, or both, *or based on a survey by others, that fact will be clearly stated and the title of the plat shall clearly depict that the plat does not represent a current boundary survey.*

~~n.~~ o. Name and address of the ~~professional~~ *land surveyor .*

3. *Metes and bounds description. The professional shall prepare a metes and bounds description in narrative form, if requested by the client or their agent, for completion of any newly performed boundary survey. The description shall reflect all metes and bounds, the area of the property described, all pertinent monumentation, names of record owners or other appropriate identification of all adjoiners, and any other data or information deemed as warranted to properly describe the property. Customarily, the metes and bounds shall be recited in a clockwise direction around the property. For subdivisions, the professional shall prepare a metes and bounds description in narrative form for only the*

exterior boundaries of the property.

No metes and bounds description shall be required for the verification or resetting of the corners of a lot or other parcel of land in accordance with a previously performed boundary survey, such as a lot in a subdivision where it is unnecessary to revise the record boundaries of the lot.

§ 5.11. *Minimum standards and procedures for surveys determining the location of physical improvements.*

A. *The following minimum standards and procedures are to be used for surveys determining the location of physical improvements on any parcel of land or lot containing less than five acres or metric equivalent (sometimes also known as "building location survey," "house location surveys," "physical surveys," etc.) in the Commonwealth of Virginia. The application of the professional's seal, signature and date as required by these regulations shall be evidence that the survey determining the location of physical improvements is correct to the best of the professional's knowledge and belief, and complies with the minimum standards and procedures set forth in this section.*

B. *The professional shall determine the position of the lot or parcel of land in accordance with the intent of the original survey, to the satisfaction of the land surveyor, and shall set or verify permanent monumentation at each corner of the property, consistent with the monumentation provisions of subdivision B 4 of § 5.10 of these regulations; all such monumentation other than natural monumentation, shall, when feasible, be identified by temporary witness markers (which may be wooden).*

When the professional finds discrepancies of sufficient magnitude to warrant, in his opinion, the performance of a land boundary survey (pursuant to the provisions of § 5.10), he shall so inform the client or the client's agent that such boundary survey is deemed warranted as a requisite to completion of the physical improvements survey.

The location of the following shall be determined in the field:

1. *All fences in the near proximity to the boundary lines and other fences which may reflect lines of occupancy or possession.*

2. *All other physical improvements on the property and all man-made or installed structures, including buildings, stoops, porches, chimneys, visible evidence of underground features (such as manholes, catch basins, telephone pedestals, power transformers, etc.), power lines and poles, and telephone lines and poles.*

3. *Cemeteries, if known or disclosed in the process of performing the survey; roads or travelways crossing the property which serve other properties; and*

Proposed Regulations

streams, creeks, and other defined drainage ways.

4. Any other visible evidence of physical encroachment on the property.

C. The plat reflecting the work product shall be drawn to scale and shall show the following, unless requested otherwise by the client and so noted on the plat:

1. The bearings and distances for the boundaries and the area of the lot or parcel of land shall be shown in accordance with record data, unless a current, new boundary survey has been performed in conjunction with the physical improvements survey. If needed to produce a closed polygon, the meander lines necessary to verify locations of streams, tidelands, lakes and swamps shall be shown. All bearing shall be shown in clockwise direction, unless otherwise indicated.

2. North arrow, in accordance with record data.

3. All fences in the near proximity to the boundary lines and other fences which may reflect lines of occupancy or possession.

4. All improvements and other pertinent features on the property as located in the field pursuant to subsection B of this section.

5. Any physical encroachment, including fences, across a property line shall be identified and dimensioned with respect to the property line. When monumentation is not required, the surveyor shall clearly note on the plat "no corner markers set" and the reason to include name of insurers.

6. On parcels where compliance with restriction is in question, provide the closest dimension (to the nearest 0.1 foot) or metric equivalent from the front property line, side property line, and if pertinent, rear property line to the principal walls of each building. Also, all principal building dimensions (to the nearest 0.1 foot) or metric equivalent.

7. Building street address numbers, as displayed on the premises, or so noted if no numbers are displayed.

8. Stoops, decks, porches, chimneys, balconies, floor projections, and other similar type features.

9. Street name(s), as posted or currently identified, and as per record data, if different from posted name.

10. Distance to nearest intersection, based upon record data. If not available from record data, distance to nearest intersection may be determined from best available data, and so qualified.

11. Building restriction line(s) per restrictive covenants, if shown on the record subdivision plat.

12. The caption or title of the plat shall include the type of survey performed; lot number, block number, section number, and name of subdivision, as appropriate, or if not in a subdivision, the name(s) of the record owner; town or county, or city; date of survey; and scale of drawing.

13. Adjoining property identification.

14. All easements and other encumbrances set forth on the record subdivision plat, and those otherwise known to the professional.

15. A statement as to whether or not a current title report has been furnished to the professional.

16. Professional's seal, signature and date.

D. Notwithstanding the monumentation provisions of subdivision B of this section or any other provision of these regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property when corner monumentation is otherwise required to be set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.1-465 of the Code of Virginia, or by subdivision A 7 of § 15.1-466 of the Code of Virginia, or where the placing of such monumentation is covered by a surety bond, cash escrow, set-aside letter, letter of credit, or other performance guaranty.

E. Moreover, notwithstanding the monumentation provisions of subdivision B of this section or any other provisions of these regulations, a professional, in performing a physical improvements survey, shall not be required to set corner monumentation on any property (i) when corner monumentation has been set pursuant to the provisions of a local subdivision ordinance as mandated by § 15.1-465 of the Code of Virginia, or by subdivision A 7 of § 15.1-466 of the Code of Virginia or (ii) when the owner or contract purchaser, or a legal agent therefore, agrees in writing when the survey is ordered that such corner monumentation shall not be provided in connection with such physical improvements survey. When corner monumentation is not provided, pursuant to such agreement, the land surveyor shall clearly reference on the plat the existing monumentation utilized to perform the physical improvements survey. The provisions of this subsection shall apply only to property located within the counties of Arlington, Fairfax, King George, Loudoun, Prince William, Spotsylvania, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park.

F. In no event may these regulations be interpreted or construed to require the professional to perform work of a lesser quality or quantity than that deemed by the professional to be prudent or warranted under the existing field conditions and circumstances.

D: Monumentation.

1. Each boundary survey of a tract or parcel of land shall be monumented with objects made of permanent material at all corners and changes in direction on the boundary with the exceptions of meanders of streams, tidelands, swamps, and roads. Where it is not feasible to set actual corners, appropriate reference markers shall be set, preferably on line, and the location of each shown on the plat or map of the boundary.

2. Original subdivision surveys shall be monumented in accordance with subdivision 1 above. Corner monuments are required to be set on subdivision lots or parcels of land to be used for conveyance of title or mortgage purposes, or, if found to be correctly in place, identified by witness stakes. The plat of such survey shall show corner monuments found and those set.

§ 5.12. Geodetic surveys.

All geodetic surveys, including the determination and publication of horizontal and vertical values utilizing Global Positioning Systems, which relate to the practice of land surveying as defined in § 54.1-400 of the Code of Virginia, shall be performed under the direct control and personal supervision of a licensed land surveyor as defined in Part I of these regulations.

PART VI.
QUALIFICATIONS FOR CERTIFICATION OF
LANDSCAPE ARCHITECTS.

§ 6.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

			June 1994	
Application	\$	75		200
Renewal		105		225
UNE Examination (1992)		375	(1993)	405 525
<i>Landscape Architect Registration Exam</i>				
Test	Section			
	1	40	44	65
	2	45	49	70
	3	90	95	120
	4	85	90	115
	5	105	110	130
	6	95	100	120
	7	60	62	85
Out of State Proctor				50

Dishonored checks

§ 6.2. Character.

Applicants must be of good moral character.

§ 6.3. Requirements for certification.

The education or experience, or both, and examination requirements for certification as a landscape architect are as follows:

1. An applicant who has graduated from an accredited landscape architecture curriculum approved by the board shall be admitted to a written examination. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.

2. An applicant who has obtained eight years of combined education and experience, evaluated in accordance with Table II, shall be admitted to a written examination approved by the board. Upon passing such examination, the applicant shall be certified as a landscape architect, if he is otherwise qualified.

§ 6.4. Experience standard.

Professional landscape architectural training and experience shall be progressive in complexity and based on a knowledge of natural, physical and ~~mathematic~~ *mathematical* sciences, and the principles and methodology of landscape architecture.

§ 6.5. Examination.

A. All applicants for original certification in Virginia are required to pass a ~~Uniform National Examination (UNE)~~ *the Landscape Architect Registration Examination (LARE)* after meeting the education and experience requirements as provided in these regulations.

B. The Virginia board is a member of the Council of Landscape Architectural Registration Boards (CLARB) and as such is authorized to administer the CLARB examinations.

C. The ~~Uniform National Examination (UNE)~~ *Landscape Architect Registration Examination (LARE)* will be offered at least once per year at a time designated by the board.

D. Grading of the examination shall be in accordance with the national grading procedures established by CLARB. The board shall adopt the scoring procedures recommended by CLARB.

E. Unless otherwise stated, applicants approved to sit for an examination shall register and submit the required examination fee to be received in the board office at a time designated by the board. ~~no later than 75 days~~

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before the next administration of the examination.
Applicants not properly registered shall not be allowed into the examination site.

F. Examinees will be given specific instructions as to the conduct of each section of the exam at the exam site. Examinees are required to follow these instructions to assure fair and equal treatment to all examinees during the course of the examination. Evidence of misconduct may result in voided examination scores or other appropriate disciplinary action.

G. Examinees will be advised only of ~~passing or failing the examination~~ *of their passing or failing score and the CLARB minimum passing or failing score* . Only the board and its staff shall have access to examination papers, scores and answer sheets.

H. Examination reviews.

Upon written request to the board within 30 days of receiving examination results, examinees will be permitted to ~~view~~ *individually view only* their own ~~failed performance problems for informational purposes~~ *failed sections* only. Examination appeals for ~~grade changes~~ *are not permitted in accordance with the CLARB score verification process* .

I. Should an applicant not pass an examination within three years after being approved, the applicant must reapply and meet all current entry requirements.

§ 6.6. Certification by comity.

Any applicant who has passed an examination in another jurisdiction of the United States or province of Canada comparable to the examination required by these regulations or who is CLARB certified and who is currently licensed or certified in another jurisdiction of the United States or province of Canada may have the required Virginia examinations waived, provided that ~~he~~ *meets* all other qualifications *are met* .

TABLE II.

TABLE OF EQUIVALENTS FOR EDUCATION AND EXPERIENCE FOR CERTIFIED LANDSCAPE ARCHITECTS.

DESCRIPTION	EDUCATION CREDITS			EXPERIENCE CREDITS	
	FIRST 2 YEARS	SUCCEEDING YEARS	MAXIMUM CREDIT ALLOWED	CREDIT ALLOWED	MAXIMUM CREDIT ALLOWED
A-1. Credits toward a degree in landscape architecture from an accredited school of landscape architecture.	100%	100%	4 years		
A-2. Degree in landscape architecture or credits toward that degree from a non-accredited school of landscape architecture.	100%	100%	4 years		
A-3. Degree or credits toward that degree in an allied professional discipline, i.e., architecture, civil engineering, environmental science, approved by the board.	75%	100%	3 years		
A-4. Any other bachelor degree, or credits toward that degree.	50%	75%	2 years		
A-5. Diversified experience in landscape architecture under the direct supervision of a certified landscape architect.				100%	no limit
A-6. Diversified experience directly related to landscape architecture when under the direct supervision of an architect, civil engineer, or "credentialed" planner.				50%	4 years

EXPLANATION OF REQUIREMENTS

B-1 Education Credits. Education credits shall be subject to the following conditions:

- B-1.1. Applicants with a degree specified in A-1 through A-4 will be allowed the credit shown in the Maximum Credit Allowed column, regardless of the length of the degree program.
- .2. With a passing grade, 32 semester credit hours or 48 quarter hours is considered to be one year. Fractions greater than one-half year will be counted one-half year and smaller fractions will not be counted.

B-2 Experience Credits. Experience credits shall be subject to the following conditions:

- B-2.1. Every applicant must earn at least two years of experience credit under category A-5.

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PART VII. QUALIFICATIONS FOR CERTIFICATION OF INTERIOR DESIGNERS.

§ 7.1. Definitions.

The following definitions shall apply in the regulations relating to the certification of interior designers:

"Diversified experience" includes the identification, research and creative solution of problems pertaining to the function and quality of the interior environment.

"Monitored experience" means diversified experience in interior design under the supervision of a person eligible for certification as an interior designer, a certified or licensed interior designer, an architect or a professional engineer.

§ 7.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$150
Renewal	150
Dishonored check	25

§ 7.3. Character.

Applicants must be of good moral character.

§ 7.4. Experience standard.

Experience in interior design shall be diversified. *Diversified experience shall be gained* in accordance with these regulations. Monitored experience gained under the supervision of a professional engineer shall be discounted at 50% with a maximum credit of six months. Periods of self-employment shall be verified with a list of projects, dates, scope of work and letters of verification by at least three clients.

§ 7.5. References.

Applicants shall submit three references from persons who know of the applicant's work and have known the applicant for at least one year. Persons supplying references may be persons eligible to be certified interior designers, certified or licensed interior designers, architects or professional engineers.

PART VIII. QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL CORPORATION.

§ 8.1. Definitions.

"Employee" of a corporation, for purposes of stock ownership, is a person regularly employed by the

corporation who devotes 60% or more of his gainfully employed time to that of the corporation.

§ 8.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$	66	180
Designation for branch office	25	50	
Renewal	66	150	
Renewal of branch office		25	
Reinstatement of branch office		25	
Dishonored check		25	

§ 8.3. Application requirements.

A. All applicants shall have been incorporated in the Commonwealth of Virginia, or, if a foreign professional corporation, shall have obtained a certificate of authority to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-544.2 of the Code of Virginia.

B. Each application shall include certified true copies of the articles of incorporation, bylaws and charter, and, if a foreign professional corporation, the certificate of authority issued by the State Corporation Commission.

C. Articles of incorporation and bylaws.

The following statements are required:

1. The articles of incorporation or bylaws shall specifically state that cumulative voting is prohibited.
2. The bylaws shall state that at least 2/3 of the capital stock must be held by persons duly licensed or certified to render the services of an architect, professional engineer, land surveyor or landscape architect. The remainder of the stock may be issued only to and held by individuals who are employees of the corporation.
3. The bylaws shall state that nonlicensed or noncertified individuals will not have a voice or standing in any matter affecting the practice of the corporation requiring professional expertise or considered professional practice, or both.

D. Board of directors.

A corporation may elect to its board of directors not more than 1/3 of its members who are employees of the corporation and are not authorized to render professional services.

At least 2/3 of the board of directors shall be licensed or certified to render the services of architecture,

professional engineering, land surveying or landscape architecture, or any combination thereof.

At least one director currently licensed or certified in each profession offered or practiced shall devote substantially full time to the business of the corporation to provide effective supervision and control of the final professional product.

E. Joint ownership of stock.

Any type of joint ownership of the stock of the corporation is prohibited. Ownership of stock by nonlicensed or noncertified employees shall not entitle those employees to vote in any matter affecting the practice of the professions herein regulated.

F. Branch offices.

If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated in accordance with these regulations.

§ 8.4. Certificates of authority.

Certificates of authority shall be issued in two categories, general or limited. A general certificate of authority will entitle the corporation to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited certificate of authority will permit a corporation to practice only the professions shown on its certificate of authority, architecture, engineering, land surveying, landscape architecture or in any combination thereof.

§ 8.5. Foreign corporations.

In addition to these regulations, the bylaws shall state that the corporation's activities shall be limited to rendering the services of architecture, professional engineering, land surveying and landscape architecture, or any combination thereof.

The corporation shall provide the name and address of each stockholder of the corporation who will be providing the professional service(s) in Virginia and whether such stockholder is licensed or certified to perform the professional service(s) in Virginia.

§ 8.6. Amendments and changes.

A. Amendments to charter, articles of incorporation or bylaws.

A corporation holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of incorporation, bylaws or

charter.

B. Change in directors or shareholders.

In the event there is a change in corporate directors or shareholders, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining directors and shareholders of the corporation. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the corporation comes into compliance with these regulations. The corporation shall notify the board within 30 days of any such change.

C. Change of name, address and place of business.

Any change of name (including assumed names) address, place of business in Virginia, or person(s) in responsible charge of the profession(s) practiced or offered at each place of business shall be reported to the board within 30 days of such an occurrence.

PART IX. QUALIFICATIONS FOR REGISTRATION AS A PROFESSIONAL LIMITED LIABILITY COMPANY.

§ 9.1. Definitions.

"Professional limited liability company" means a limited liability company organized in accordance with Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1 of the Code of Virginia for the sole and specific purpose of rendering the professional services of architecture, professional engineering, land surveying and landscape architecture.

"Manager" is a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement, and who is duly licensed or otherwise legally authorized to render the professional services of architecture, professional engineering, land surveying and landscape architecture in the Commonwealth of Virginia.

"Member" means an individual or professional business entity that owns an interest in a limited liability company, and who is duly licensed or otherwise legally authorized to render the professional services of architecture, professional engineering, land surveying and landscape architecture in the Commonwealth of Virginia.

§ 9.2. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application \$ 125

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Renewal 70

Dishonored check 25

§ 9.3. Application requirements.

A. All applicants shall have obtained a certificate of organization in the Commonwealth of Virginia or, if a foreign professional limited liability company, shall have obtained a certificate of registration to do business in Virginia from the State Corporation Commission, in accordance with § 13.1-1105 of the Code of Virginia.

B. Each application shall include a certified true copy of the certificate of organization or, if a foreign professional limited liability company, a certificate of registration issued by the State Corporation Commission.

C. Each application shall be accompanied by a written affirmative affidavit that attests to the following inclusions to the articles of organization or operating agreement.

1. The articles of organization or operating agreement shall state the specific purpose of the professional limited liability company.

2. The articles of organization or operating agreement shall attest that membership is composed of two or more individuals or professional business entities, and at least 2/3 of which are duly licensed to render professional services within the Commonwealth of Virginia. The remaining membership interest may be held only by employees of the company whether or not they are licensed or otherwise legally authorized to render professional services.

3. The articles of organization or operating agreement shall attest that all members, managers, employees and agents who render professional services of architecture, professional engineering, land surveying or landscape architecture are duly licensed to provide those services.

4. The person executing the document shall sign it and state beneath his signature his name and the capacity in which he signs.

D. Unless the articles of organization or an operating agreement provides for management of a professional limited liability company by a manager or managers, management of a limited liability company shall be vested in its members, all of which must be duly licensed or otherwise legally authorized to render the professional services within the Commonwealth for which the company was formed.

The manager must be an individual or professional business entity duly licensed or otherwise legally authorized to render the same professional services within the Commonwealth for which the company was formed.

§ 9.4. Certificates of authority.

A certificate of authority shall be issued by the board in two categories, general or limited. A general certificate of authority will permit a professional limited liability company to practice the professions of architecture, professional engineering, land surveying and landscape architecture. A limited certificate of authority will permit a professional limited liability company to practice only the professions shown on its certificate of authority, architecture, professional engineering, land surveying, landscape architecture, or any combination thereof.

§ 9.5. Foreign professional limited liability companies.

In addition to the requirements of these regulations, the articles of organization or operating agreement shall state that the professional limited liability company's activities shall be limited to rendering the professional services of architecture, professional engineering, land surveying and landscape architecture, or any combination thereof.

The professional limited liability company shall provide the name and address of each manager or member who will be providing the professional service(s) in Virginia and whether such manager or member is licensed or certified to perform the professional service(s) in Virginia.

§ 9.6. Amendments to articles of organization, operating agreements or certificate of organization; change in managers or members; change in name, address and place of business.

A. A professional limited liability company holding a certificate of authority to practice in one or in any combination of the professions covered in these regulations shall file with the board, within 30 days of its adoption, a certified true copy of any amendment to the articles of organization, operating agreement or certificate of organization.

B. In the event there is a change of professional limited liability company managers or members, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the certificate of authority shall be automatically modified to be limited to that professional practice permitted by those pertinent licenses or certificates held by the remaining managers or members of the professional limited liability company. Unless otherwise provided, in the event that such change results in noncompliance with these regulations and applicable statutes, the certificate of authority shall be automatically suspended until such time as the professional limited liability company comes into compliance with these regulations. The professional limited liability company shall notify the board within 30 days of any such change.

No member of the professional limited liability company may transfer or sell its membership interest in the company, except to the company, or unless at least 2/3 of

the remaining membership interest is held by individuals or professional business entities duly licensed or otherwise authorized to render the professional services of the company.

C. Any change of name (including assumed names), address, place of business in Virginia, registered agent or person(s) in responsible charge of the profession(s) practiced or offered shall be reported to the board within 30 days of such an occurrence.

**PART IX. X.
QUALIFICATIONS FOR REGISTRATION AS A
BUSINESS ENTITY - OTHER THAN A
PROFESSIONAL CORPORATION AND
PROFESSIONAL LIMITED LIABILITY COMPANY.**

§ 9-1. 10.1. Fee schedule.

All fees are nonrefundable and shall not be prorated.

Application	\$ 75	125
Designation for branch office	25	45
Renewal	55	70
Renewal of branch office		25
Reinstatement of branch office		25
Dishonored check		25

§ 9-2. 10.2. Application requirements.

A. In accordance with § 54.1-411 of the Code of Virginia, applicants shall register with the board on a form approved by the board.

B. If a partnership, a copy of the partnership agreement shall be included with the application. Not less than 2/3 of the general partners shall be licensed professionals.

C. If a corporation, the application shall include certified true copies of the articles of incorporation, bylaws and charter, and if a foreign corporation, a certificate of authority issued by the State Corporation Commission.

D. If a limited liability company, the application shall include a certified true copy of the certificate of organization issued by the State Corporation Commission, and, if a foreign limited liability company, a certified true copy of the certificate of authority issued by the State Corporation Commission.

D. Branch offices.

E. If professional services are offered or rendered in a branch office(s), a separate branch office designation form shall be completed for each branch office located in Virginia. Persons in responsible charge shall be designated

in accordance with these regulations.

§ 9-3. 10.3. Registration certification.

The application shall contain an affidavit by an authorized official in the corporation, partnership, sole proprietorship, *limited liability company*, or other entity unit that the practice of architecture, professional engineering, land surveying or certified landscape architecture to be done by that entity shall be under the direct control and personal supervision of the licensed or certified full-time employees identified in the application as responsible for the practice. In addition, the licensed or certified employees responsible for the practice shall sign their names indicating that they are full-time employees and in responsible charge, and that they understand and shall comply with all statutes and regulations of the board.

§ 9-4. 10.4. Change of status.

Any changes of status, including but not limited to change in entity, name (including assumed names), address, place of business or persons in responsible charge of the professions practiced or offered at each place of business, shall be reported to the board within 30 days of such an occurrence.

In the event there is a change in the licensed or certified employees in responsible charge, whether the change is temporary or permanent and whether it may be caused by death, resignation or otherwise, the registration shall be automatically modified to be limited to that professional practice permitted by the remaining licensed or certified employees, or shall be automatically suspended until such time as the entity comes into compliance with these regulations.

**PART X. XI.
RENEWAL AND REINSTATEMENT.**

§ 10-1. 11.1. Expiration and renewal.

A. Prior to the expiration date shown on the license, certificate or registration, licenses, certificates or registrations shall be renewed for a two-year period upon completion of a renewal application and payment of a fee established by the board. An applicant must certify that he continues to comply with the Standards of Practice and Conduct as established by the board. Registrations for professional corporations and business entities shall expire on December 31 of each odd-numbered year. Branch offices may not renew until the main office registration is properly renewed.

B. Failure to receive a renewal notice and application shall not relieve the regulant of the responsibility to renew. If the regulant fails to receive the renewal notice, a copy of the license, certificate or registration may be submitted with the required fee as an application for renewal, accompanied by a signed statement indicating that the applicant continues to comply with the Standards

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of Practice and Conduct of the board under whose authority the license, certificate or registration is issued.

C. Board discretion to deny renewal.

The board may deny renewal of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

D. If the renewal fee is not received by the board within 30 days following the expiration date noted on the license, certificate or registration, a late renewal fee equal to the regular fee plus \$100 shall be required, unless a reinstatement fee is otherwise noted.

§ 10.2: 11.2. Reinstatement.

A. If the renewal fee is not received by the board within 30 days following the date noted on the license, certificate or registration, a reinstatement fee equal to the renewal fee plus \$ 100 shall be required, unless a reinstatement fee is otherwise noted.

B. A. If the license, certificate or registration has expired for six months or more, but less than five years, the regulant shall be required to submit a new application, which shall be evaluated by the board to determine if the applicant meets the renewal requirements. In addition, a *reinstatement* fee equal to the regular renewal fee plus \$100 \$250 , times the number of renewal eyes the license, certificate or registration has expired shall be required ; unless a reinstatement fee is otherwise noted .

C. B. If the license, certificate or registration has expired for five years or more, the regulant will be required to submit a new application, meet current entry requirements, and submit a *reinstatement* fee equal to the regular renewal fee plus \$100; times the number of renewal eyes the license, certificate or registration has expired. In no event shall an applicant be required to pay fees for more than four renewal eyes: \$250. In addition, the board may require the applicant to submit to an examination.

D. C. Board discretion to deny reinstatement.

The board may deny reinstatement of a license, certificate or registration for the same reasons as it may refuse initial licensure, certification or registration or discipline a regulant.

E. D. The date the renewal application and fee are received in the office of the board shall determine whether a license, certificate or registration shall be renewed without *late renewal* or reinstatement , or shall be subject to reinstatement application procedures.

PART XI. XVII. STANDARDS OF PRACTICE AND CONDUCT.

§ 11.1: 12.1. Responsibility to the public.

The primary obligation of the professional is to the public. If the professional judgment of the regulant is overruled under circumstances when the safety, health, property and welfare of the public are endangered, the professional shall inform the employer or client of the possible consequences and notify appropriate authorities.

§ 11.2: 12.2. Public statements.

The professional shall be truthful in all professional matters.

A. When serving as an expert or technical witness, the professional shall express an opinion only when it is based on an adequate knowledge of the facts in the issue and on a background of technical competence in the subject matter. Except when appearing as an expert witness in court or an administrative proceeding when the parties are represented by counsel, the professional shall issue no statements, reports, criticisms, or arguments on matters relating to professional practice which are inspired or paid for by an interested party or parties, unless the regulant has prefaced the comment by disclosing the identities of the party or parties on whose behalf the professional is speaking, and by revealing any self-interest.

B. A professional shall not knowingly make a materially false statement or fail deliberately to disclose a material fact requested in connection with his application for licensure, certification, registration, renewal or reinstatement.

C. A professional shall not knowingly make a materially false statement or fail to deliberately disclose a material fact requested in connection with an application submitted to the board by any individual or business entity for licensure, certification, registration, renewal or reinstatement.

§ 11.3: 12.3. Conflicts of interest.

The professional shall promptly and fully inform an employer or client of any business association, interest, or circumstances which may influence the professional's judgment or the quality of service.

A. The professional shall not accept compensation, financial or otherwise, from more than one party for services on or pertaining to the same project, unless the circumstances are fully disclosed in writing to all parties of current interest.

B. The professional shall neither solicit nor accept financial or other valuable consideration from suppliers for specifying their products or services.

C. The professional shall not solicit or accept gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with a client or employer in

connection with work for which the professional is responsible.

§ 11.4. 12.4. Solicitation of work.

In the course of soliciting work:

1. The professional shall not bribe.
2. The professional shall not falsify or permit misrepresentation of the professional's work or an associate's academic or professional qualifications, nor shall the professional misrepresent the degree of responsibility for prior assignments. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures or past accomplishments of any kind.

§ 11.5. 12.5. Competency for assignments.

A. The professional shall undertake to perform professional assignments only when qualified by education or experience and licensed or certified in the profession involved. The professional may accept an assignment requiring education or experience outside of the field of the professional's competence, but only to the extent that services are restricted to those phases of the project in which the professional is qualified. All other phases of such project shall be the responsibility of licensed or certified associates, consultants or employees.

B. A professional shall not misrepresent to a prospective or existing client or employer his qualifications and the scope of his responsibility in connection with work for which he is claiming credit.

C. The professional shall adhere to all minimum standards and requirements pertaining to the practice of his own profession as well as other professions if incidental work is performed.

§ 11.6. 12.6. Professional responsibility.

A. The professional shall not knowingly associate in a business venture with, or permit the use of the professional's name or firm name by any person or firm where there is reason to believe that person or firm is engaging in activity of a fraudulent or dishonest nature or is violating statutes or any of these regulations.

B. A professional who has direct knowledge that another individual or firm may be violating any of these provisions, or the provisions of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, shall immediately inform the secretary of the board in writing and shall cooperate in furnishing any further information or assistance that may be required.

C. The professional shall, upon request or demand, produce to the board, or any of its agents, any plan, document, book, record or copy thereof in his possession

concerning a transaction covered by these regulations, and shall cooperate in the investigation of a complaint filed with the board against a licensee.

D. A professional shall not knowingly use the design, plans or work of another professional without the original professional's knowledge and consent and after consent, a thorough review to the extent that full responsibility may be assumed.

§ 11.7. 12.7. Good standing in other jurisdictions.

A professional licensed or certified to practice architecture, professional engineering, land surveying, landscape architecture or interior design in other jurisdictions shall be in good standing in every jurisdiction where licensed or certified, and shall not have had a license or certificate suspended, revoked or surrendered in connection with a disciplinary action or who has been the subject of discipline in another jurisdiction.

§ 11.8. 12.8. Use of seal.

A. The application of a professional seal shall indicate that the professional has exercised complete direction and control over the work to which it is affixed. Therefore, no regulant shall affix a name, seal or certification to a plat, design, specification or other work constituting the practice of the professions regulated which has been prepared by an unlicensed or uncertified person or firm unless such work was performed under the direction and supervision of the regulant while under the regulant's contract or while employed by the same firm as the regulant. If a regulant is unable to seal completed professional work, such work may be sealed by another regulant only after thorough review and verification of the work has been accomplished to the same extent that would have been exercised if the work had been done under the complete direction and control of the regulant affixing the professional seal.

B. A principal or authorized licensed or certified employee shall apply a stamp or preprinted seal to final and complete cover sheets of plans, drawings, plats, technical reports and specifications and to each original sheet of plans, drawings or plats, prepared by the regulant or someone under his direct control and personal supervision.

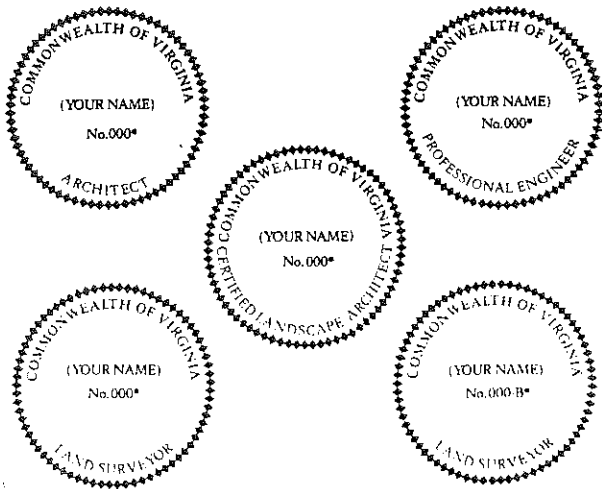
1. All seal imprints on final documents shall bear an original signature and date.
2. Incomplete plans, documents and sketches, whether advance or preliminary copies, shall be so identified and need not be sealed or signed.
3. All plans, drawings or plats prepared by the regulant shall bear the regulant's name or firm name, address and project name.
4. The seal of each regulant responsible for each

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profession shall be used.

5. Application of the seal and signature indicates acceptance of responsibility for work shown thereon.

6. The seal shall conform in detail and size to the design illustrated below: (Size has been reduced for publication.)



* The number referred to is the six digit number as shown on the license, certificate or registration. The number is permanent.

§ 11-9. 12.9. Organization and styling of practice.

Nothing shall be contained in the name, letterhead or other styling of a professional practice implying a relationship, ability or condition which does not exist.

An assumed, fictitious or corporate name shall not be misleading as to the identity, responsibility or status of those practicing thereunder.

§ 11-10. 12.10. Licensee required at each place of business.

A. Corporations, partnerships, firms or other legal entities maintaining a place of business in the Commonwealth of Virginia for the purpose of offering to provide architectural, engineering, land surveying or certified landscape architectural services practiced at another location shall have an authorized full-time licensed or certified architect, professional engineer, land surveyor or landscape architect in that place of business.

B. Corporations, partnerships, firms or other legal entities maintaining any place of business in the Commonwealth of Virginia for the purpose of practicing architecture, engineering, land surveying or certified landscape architecture at that location, shall have in responsible charge at each place of business a full-time resident licensed or certified architect, professional

engineer, land surveyor or landscape architect exercising supervision and control of work in each profession being practiced.

§ 11-11. 12.11. Sanctions.

A. No license, certification, registration or regulant shall be fined, suspended or revoked unless a majority of the members of the entire board and a majority of the board members of the profession involved vote for the action. The board may fine, suspend or revoke any license, certification, certificate of authority or registration, if the board finds that:

1. The license, certification or registration was obtained or renewed through fraud or misrepresentation; or

2. The regulant has been found guilty by the board, or by a court of competent jurisdiction, of any material misrepresentation in the course of professional practice, or has been convicted, pleaded guilty or found guilty regardless of adjudication or deferred adjudication of any felony or misdemeanor which, in the judgment of the board, adversely affects the regulant's ability to perform satisfactorily within the regulated discipline; or

3. The regulant is guilty of professional incompetence or negligence; or

4. The regulant has abused drugs or alcohol to the extent that professional competence is adversely affected; or

5. The regulant violates any standard of practice and conduct, as defined in these regulations; or

6. The regulant violates or induces others to violate any provision of Chapters 1 through 3 of Title 54.1, or Chapter 7 of Title 13.1 of the Code of Virginia, or any other statute applicable to the practice of the professions herein regulated or any provision of these rules and regulations.

B. If evidence is furnished to the board which creates doubt as to the competency of a regulant to perform professional assignments in a technical field, the board may require the regulant to prove competence by interview, presentation or examination. Failure to appear before the board, pass an examination, or otherwise demonstrate competency to the board shall be basis for revocation or suspension of the license, certification or registration.

NOTICE: The forms used in administering the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and

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Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia, 23230-4917 or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Application for Architect Licensure (Form 308, 7/1/93)
Applicant Check-Off Form (7/1/93)
Instruction Sheet (DPOR Form A-1, 7/1/93)
State Verification of Registration Form (DPOR Form A-2, 7/1/93)
Reference Form (DPOR Form A-4, 7/1/93)
Written Examination Schedule for 1993-1994

Application for Licensing as a Professional Engineer (DPOR Form E-1, 7/1/93)
Reference Form (DPOR Form E-2, 7/1/93)
Verification of Degree Granted Form (DPOR Form E-3, 7/1/93)
Letter of Instruction (DPOR Form E-4, 7/1/93)
Verification of Registration Form (DPOR Form E-5, 7/1/93)
Written Examination Schedule for 1994-1995

Application for Registration as an Engineer-in-Training (DOC Form EIT-1, 8/15/91)
Reference Form (DOC Form EIT-2, 8/15/91)
Verification of Degree Granted (DOC Form EIT-3, 8/15/91)
Application for Engineer-in-Training (DOC Form EIT-4, 8/15/91)
Engineer Examination Schedule Form (DOC Form EIT-5, 8/15/91)
Written Examination Schedule for 1992-1994

Application for Licensing as a Land Surveyor (DOC Form L-2, 4/1/92)
Applicant Check-Off Form (4/1/92)
Instruction Sheet (DOC Form L-1, 4/1/92)
Verification of Registration (DOC Form L-3, 4/1/92)
Reference Form (DOC Form L-4, 4/1/92)
Experience Verification Form (DOC Form L-5, 4/1/92)
Written Examination Schedule for 1992-1994

Application for Certification as a Landscape Architect (DOC Form LA-1, 3/16/92)
Applicant Check-Off Form (3/16/92)
Instruction Sheet (DOC Form LA-2, 3/16/92)
Verification of Registration (DOC Form LA-3, 3/16/92)
Verification of Degree Granted (DOC Form LA-4, 3/16/92)
Reference Form (DOC Form LA-5, 3/16/92)
Experience Verification Form (DOC Form LA-6, 3/16/92)
Written Examination Schedule for 1992-1993

Application for a Certificate of Authority to Practice Architecture, Professional Engineering, Land Surveying and Landscape Architecture as a Professional Corporation (7/1/93)

Application for Registration to Provide Professional

Services as a Business Entity (4/1/92)

Application for Interior Design Certification (DPOR Form ID-1, 7/1/93)
Applicant Check-Off Form (7/1/93)
Instruction Sheet (DPOR Form ID-2, 7/1/93)
Verification of Registration (DPOR Form ID-3, 7/1/93)
Request Memo to NCIDQ for Verification of Written Examination (Form ID-4, 7/1/93)
Reference Form (DPOR Form ID-5, 7/1/93)
Experience Verification Form (DPOR Form ID-6, 7/1/93)

V.A.R. Doc. No. R94-250; Filed November 10, 1993, 11:58 a.m.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Title of Regulation: VR 173-01-00:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2103 of the Code of Virginia.

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until 4 p.m. on January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-2102 of the Chesapeake Bay Preservation Act authorizes the Chesapeake Bay Local Assistance Board (board) to adopt rules and procedures for the conduct of its business. Section 10.1-2107 requires the board to consider economic costs and benefits that can be expected to result from its regulatory actions.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety and welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel,

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standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities particularly affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impact: No financial impact on regulated entities or the public is expected from the adoption of this proposal, since the proposal only imposes requirements on the board. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely

fashion during all phases of the regulatory process. These proposed amendments are consistent with those of other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities particularly affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 173-01-00:1. 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:

"Act" means the Chesapeake Bay Preservation Act, Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia.

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

"Agency" means the Chesapeake Bay Local Assistance Department established pursuant to the Chesapeake Bay Preservation Act.

"Board" means the Chesapeake Bay Local Assistance Board established pursuant to the Chesapeake Bay Preservation Act.

"Director" means the executive director of the Chesapeake Bay Local Assistance Department or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided for in § 9-6.14.7.1 of the Administrative Process Act, and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14.8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with other groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14.7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Chesapeake Bay Preservation Act or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14.4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14.4.1 C).

B. At the discretion of the board or the agency, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. C. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The board shall provide a written response to such a petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be requested periodically to indicate their desire to continue to receive documents or be deleted from a list. When mail is returned as undeliverable, individuals and organizations may be deleted from any list at the discretion of the agency.

B. Whenever the board so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the board specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The agency shall use the participatory approach to assist in

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the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the agency to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director will determine the specific approach to be used.

D. The agency shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal.

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting

whenever it considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations.

E. The agency shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may prepare complete the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established the participatory approach is being used, the draft regulation shall be developed in consultation with such group the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. The identity of any locality particularly affected by the proposed regulation.

5. A statement that an analysis of the following has

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been conducted by the agency and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ *the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .*

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost , *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. *A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.*

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed

regulation. ~~In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.~~ The *public* hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than ~~10~~ 15 days prior to the close of the public comment period. The *public* hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons. *In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.*

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the board. The summary, the agency response, and the comments shall become a part of the agency file and, after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the agency shall present to the board for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been

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published in The Virginia Register of Regulations prior to ~~January 1, 1993~~; the effective date of this regulation shall be processed in accordance with the ~~VR 173-01-00 emergency amendments to VR 173-01-00:1 Public Participation Procedures Guidelines which are effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations~~.

B. This regulation when effective shall supersede and repeal emergency amendments to VR 173-01-00:1 Public Participation Guidelines which became effective on June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to ~~January 1, 1993~~, the effective date of this regulation shall be processed in accordance with this regulation (VR 173-01-00:1).

VA.R. Doc. No. R94-237; Filed November 10, 1993, 9:50 a.m.

DEPARTMENT OF CONSERVATION AND RECREATION

Board of Conservation and Recreation

Title of Regulation: VR 215-00-00. Regulatory Public Participation Procedures.

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-107 of the Code of Virginia authorizes the Board of Conservation and Recreation (board) to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a

regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the board and the Department of Conservation and Recreation. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board and the Department of Conservation and Recreation. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal

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requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 215-00-00. Regulatory Public Participation Procedures.

§ 1. Definitions.

A. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Agency" means the Department of Conservation and

Recreation, including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Board of Conservation and Recreation, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held in conjunction with the Notice of Public Comment to afford persons an opportunity to submit views and data relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

"Virginia law" means the provisions found in the Code of Virginia statutory law or the Virginia Acts of Assembly authorizing the approving authority, director, or agency to make regulations or decide easements or containing procedural requirements thereof.

B. Unless specifically defined in Virginia law or in this regulation, terms used shall have the meanings commonly

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ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the ~~initial~~ formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act § 9-6.14:1 A and B or excluded from the operation of Article 2 of the Administrative Process Act § 9-6.14:4.1 C.

~~B. At the discretion of the approving authority or the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

~~C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation .~~

~~D. C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:~~

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations*

may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the approving authority so directs or upon the director's initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the approving authority specifically authorizes the director to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. *The director shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:*

1. Proceed without using the participatory approach if the approving authority specifically authorizes the director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a ~~Notice of Intended Regulatory Action (NOIRA)~~ NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

~~a. c.~~ A brief statement as to the need for regulatory action.

~~b. d.~~ A brief description of alternatives available, if any, to meet the need.

~~c. e.~~ A request for comments on the intended regulatory action, to include any ideas to assist the

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agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal .

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the director's intent to hold at least one public hearing on the proposed regulation after it is published in *The Virginia Register of Regulations*.

h. A statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the director to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in *The Virginia Register of Regulations* , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in *The Virginia Register of Regulations* .

E. The agency shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may prepare complete the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established the participatory approach is being used , the draft regulation shall be developed in consultation with such group the participants . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice

of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. 2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare .

b. A statement of estimated impact:

(1) Number Projected number and types of regulated entities or persons affected.

(2) Projected cost , expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in

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Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 to receive comments on the proposed regulation. ~~(In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than ~~10~~ 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons. *In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations .

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days*

before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the director determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the director shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to December 30, 1992, the effective date of this regulation shall be processed in accordance with emergency amendments to the VR 215-01-00, VR 215-00-00 Regulatory Public Participation Guidelines Procedures effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation when effective shall supersede and repeal emergency amendments to VR 215-00-00 Regulatory Public Participation Procedures which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to December 30, 1992, the effective date of this regulation shall be processed in accordance with this regulation (VR 215-00-00. Regulatory Public Participation Procedures).

VA.R. Doc. No. R94-238; Filed November 9, 1993, 2:11 p.m.

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Department of Conservation and Recreation

Title of Regulation: VR 217-00-00. Regulatory Public Participation Procedures.

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use

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public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation (department) to prescribe rules and regulations necessary and incidental to the performance of duties or execution of powers conferred by law and to promulgate regulations pursuant to the Administrative Process Act to carry out the provisions of Subtitle I of Title 10.1 of the Code of Virginia.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the department and the public during the adoption, amendment, or repeal of regulations; they require the department to present additional information for use by the public in understanding and commenting on regulatory actions; and, they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat.

The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the director and the Department of Conservation and Recreation. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the director and the Department of Conservation and Recreation. Localities should benefit from the adoption in that the guidelines require the director to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the

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participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 217-00-00. Regulatory Public Participation Procedures.

§ 1. Definitions.

A. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Agency" means the Department of Conservation and Recreation, including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Director of the Department of Conservation and Recreation established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

"Person" means an individual, a corporation, a

partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

"Virginia law" means the provisions found in the Code of Virginia or the Virginia Acts of Assembly statutory law authorizing the approving authority, director, or agency to make regulations or decide cases or containing procedural requirements thereof.

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

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act § 9-6.14:1 A and B or excluded from the operation of Article 2 of the Administrative Process Act § 9-6.14:4.1 C.

B. At the discretion of the approving authority, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or

amendment to a specific regulation or regulations;

5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.*

B. Whenever the approving authority so directs, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. ~~The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the director as the approving authority specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The director shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:~~

1. Proceed without using the participatory approach if the approving authority specifically authorizes the director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director shall use the

participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a ~~notice of intended regulatory action (NOIRA)~~ *NOIRA* whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

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

b. d. A brief description of alternatives available, if any, to meet the need.

e. e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the ~~drafting and formation of any proposed regulation developed pursuant to the NOIRA~~ development of any proposal .

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the director's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the director as the approving authority specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in The Virginia Register of Regulations .

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E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.
2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If ~~an ad hoc advisory group has been established~~ *the participatory approach is being used*, the draft regulation shall be developed in consultation with ~~such group~~ *the participants*. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

~~2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.~~

~~3. 2. A request for comments on the costs and benefits of the proposal.~~

~~3. The identity of any locality particularly affected by the proposed regulation.~~

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ *the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare*.

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost, *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where ~~an~~ *the* agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 to receive comments on the proposed regulation. ~~(In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.)~~ The *public* hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than ~~10~~ *15* days prior to the close of the public comment period. The *public* hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons. *In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

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V.A.R. Doc. No. R94-237; Filed November 9, 1993, 2:16 p.m.

* * * * *

Virginia Soil and Water Conservation Board

Title of Regulation: VR 625-00-00:1. Regulatory Public Participation Procedures.

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-603.18, 10.1-605 and 10.1-637 of the Code of Virginia.

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-502 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board (board) to promulgate regulations necessary for the execution of Chapter 5 (§ 10.1-500 et seq.) of Title 10.1 of the Code of Virginia. This authorization covers the Erosion and Sediment Control Law and its attendant regulations. Section 10.1-603.18 of the Code of Virginia authorizes the board to promulgate regulations for the proper administration of the Flood Prevention and Protection Assistance Fund which is to include but not limited to the establishment of amounts, interest rates, repayment terms, consideration of the financial stability of the particular local public body applying and all other criteria for awarding of grants or loans under the Flood Prevention and Protection Assistance Fund Act (§ 10.1-603.16 et seq.). The Dam Safety Act under § 10.1-605 of the Code of Virginia requires the board to promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated (§ 10.1-604 et seq.). The Conservation, Small Watersheds Flood Control and Area Development Fund Act (§ 10.1-636 et seq.) authorizes the board to establish guidelines for the proper administration of the fund and the provisions of the article (Article 4).

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the director as the approving authority, made available, upon request, to interested persons.

L. If the director as the approving authority determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation, the director shall state in writing a rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to ~~December 30, 1992~~, the effective date of this regulation shall be processed in accordance with the ~~VR 215-01-00~~ emergency amendments to VR 217-00-00 Regulatory Public Participation Guidelines.

B. This regulation, when effective, shall supersede and repeal emergency amendments to VR 217-00-00 Regulatory Public Participation Procedures which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to ~~December 30, 1992~~, the effective date of this regulation shall be processed in accordance with this regulation (VR 217-00-00. Regulatory Public Participation Procedures).

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regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the board and the Department of Conservation and Recreation. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board and the Department of Conservation and Recreation. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal

requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 625-00-00:1. Regulatory Public Participation Procedures.

§ 1. Definitions.

A. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Agency" means the Department of Conservation and

Recreation, including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Virginia Soil and Water Conservation Board, the collegial body (board), established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

"Virginia law" means the provisions found in the Code of Virginia statutory law or the Virginia Acts of Assembly authorizing the approving authority, director, or agency to make regulations or decide cases or containing procedural requirements thereof.

B. Unless specifically defined in Virginia law or in this

regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act § 9-6.14:1 A and B or excluded from the operation of Article 2 of the Administrative Process Act § 9-6.14:4.1 C.

B. At the discretion of the approving authority or the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the

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promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the approving authority so directs or upon the director's initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the approving authority specifically authorizes the director to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The director shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the director to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of the proposal. If the director receives written responses from at least five persons during the associated comment period indicating that the director should use the participatory approach, the director will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended

regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal .

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the director's intent to hold at least one public hearing on the proposed regulation after it is published in *The Virginia Register of Regulations*.

h. A statement inviting comment on whether the director should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the director makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the director to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in *The Virginia Register of Regulations* , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in *The Virginia Register of Regulations* .

E. The agency shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may prepare complete the draft proposed regulation and any supporting documentation required for review. If an ad hoc advisory group has been established the participatory approach is being used , the draft regulation shall be developed in consultation with such group the participants . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ad hoc advisory group participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by

the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include, at least, the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. A request for comments on the costs and benefits of the proposal.

4. The identity of any locality particularly affected by the proposed regulation.

5. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Number Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in §

9-199 of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

6. The date, time and place of at least one public hearing held in accordance with § 9-6.14.7.1 of the Code of Virginia to receive comments on the proposed regulation. (In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14.8.) The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the agency determine will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14.8 of the Administrative Process Act.

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. The agency shall send

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a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, and the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the director determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the director shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to ~~December 30, 1992~~, the effective date of this regulation shall be processed in accordance with the ~~VR 625-00-00~~ emergency amendments to VR 625-00-00:1 Regulatory Public Participation Guidelines Procedures effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation when effective shall supersede and repeal emergency amendments to VR 625-00-00:1 Regulatory Public Participation Guidelines Procedures which became effective June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to ~~December 30, 1992~~, the effective date of this regulation shall be processed in accordance with this regulation (VR 625-00-00:1. Regulatory Public Participation Procedures).

VA.R. Doc. No. R94-239; Filed November 9, 1993, 2:10 p.m.

BOARD FOR COSMETOLOGY

Title of Regulation: VR 235-01-1. Public Participation Guidelines (REPEALING).

VA.R. Doc. No. R94-219; Filed November 9, 1993, 11:51 a.m.

Title of Regulation: VR 235-01-1:1. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted until February 10, 1994.

(See Calendar of Events section

for additional information)

Basis: The statutory authority for the Board for Cosmetology to promulgate the Public Participation Guidelines is found in § 54.1-1202 of the Code of Virginia. The board is empowered to promulgate regulations setting standards for initial licensure and continuing licensure and standards of conduct for cosmetologists and nail technicians.

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 Board for Cosmetology Public Participation Guidelines contain substantially similar language as the emergency guidelines, 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 are such that the public has the advantage of participating in the development of the cosmetology licensure regulations. With the participation of the public, they will become more familiar with the contents and expectations of the 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: 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 of and compliance with this regulation.

Summary:

The Board for Cosmetology Public Participation Guidelines (PPG's) mandate public participation in the promulgation process of cosmetology and nail technician licensure. 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 give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPG's 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 PPG's. The PPG's specify what meetings and notices will be published in *The Virginia Register*.

VR 235-01-1:1. 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 Cosmetology.

"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 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 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

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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.

V.A.R. Doc. No. R94-218; Filed November 9, 1993, 11:51 a.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.

Statutory Authority: §§ 22.1-16, 22.1-302 and 22.1-304 of the Code of Virginia.

Public Hearing Dates:

December 14, 1993 - 7 p.m.

January 19, 1994 - 7 p.m.

January 20, 1994 - 7 p.m.

Written comments may be submitted until January 29, 1994.

(See Calendar of Events section for additional information)

Basis: Section 22.1-16 of the Code of Virginia provides the Board of Education with the authority to promulgate regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of

Virginia.

Purpose: The purpose of this regulatory action is to promulgate new regulations that meet the requirements of § 22.1-302 of the Code of Virginia requiring that "a written contract in a form prescribed by the Board of Education, shall be made by the school board with each teacher employed by it..." The regulations are also intended to improve hiring procedures of teachers which sometimes are affected by issues related to breach of contract as set forth in § 22.1-304 of the Code of Virginia.

Substance: The new regulations provide an overview of the contracting process for local boards and employees, definitions of relevant terms, descriptions of contract provisions, and revised contract prototypes with a list of essential elements that may be used by local school boards at their discretion in the employment of professional personnel. In addition, the proposed regulations set forth a new section on uniform hiring of teachers which is designed to bring more uniformity to the hiring process, help local school boards maintain a stable workforce, and provide greater professional mobility for teachers.

Issues: Regulations governing contractual agreements with professional personnel first became effective in 1950. They were last amended in 1980. Over the years questions have surfaced concerning the use of prototypes, interpretation of contract terms and provisions, issues related to breach of contract, and lack of uniformity in hiring practices. The proposed regulations resulted from concerns from both the Board of Education and the legislature.

Impact: These regulations affect all 134 school divisions in the Commonwealth. Every teacher also will benefit from the clarity of the new regulations. There is no additional cost to the department to implement and enforce these regulations. The board stands to benefit from the regulations in reducing the likelihood for petitions for review in situations involving breach of contract.

Summary:

The proposed regulations include provisions for contractual agreements and hiring procedures. The regulations provide an overview of the contracting process for local school boards and their professional employees, definitions of relevant contract terms, and descriptions of contract provisions. Revised contract prototypes with a listing of essential contract elements are included within the appendix of the regulations. The regulations describe the employment of professional personnel as a process that rests with the local school board and the employee and sets forth the prototypes and contract elements as resources that local boards may use at their discretion in meeting the requirements of the employment process.

The proposed regulations are new regulations that are

intended to replace VR 270-01-0042, which will be repealed. The proposed regulations reflect substantial changes over the previous section on contractual agreements. For the first time, all relevant terms are being described and an entirely new section on the uniform hiring of teachers is presented.

The specific provisions of the proposed regulations are in two parts: The preamble describes who the parties are and that the hiring discretion is with the local school board. Part I includes (i) definitions of terms, including types of contracts and the personnel involved, (ii) the contract period and the form of the contract including sample prototypes of each type of contract and a listing of essential contract terms, (iii) the specific provisions of the annual contract, (iv) the specific provisions of the continuing contract, and (v) the specific provisions of the coaching contract. Part II includes (i) a discussion of the purpose of a uniform hiring process, and (ii) a three-phase hiring process with detailed descriptions of the benefits and requirements of each phase. The three-phase process establishes a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates establish minimum timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of a locality, and offer professional mobility for teachers.

Preamble:

Local school boards are authorized to employ professional personnel to assist in their vested duty of supervision of schools in their localities. Employment contracts embody the agreements between the local school board and the employee, and such agreements between the parties must include the essential elements of a contract and requirements of state law, and represent the duties, responsibilities, rights and benefits of both parties. Conditions and practices that are unique to a particular school board should be set forth as additional terms or covenants in a contract, while preserving the integrity of the contract and the requirements of law.

It is the intent of these regulations to set forth the requirements provided by law for contractual agreements for school boards and employees. In addition, these regulations provide a structure for uniform hiring procedures to be used by local school boards to ensure that their employment needs are met and that employees are able to take advantage of opportunities for professional growth. Further, local school boards may continue or adopt policies that meet or exceed the minimum standards set forth in these regulations.

VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.

PART I. CONTRACTUAL AGREEMENTS.

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.

"Annual contract" means a contract between the employee and the local school board which sets forth the terms and conditions of employment for one school year.

"Board" means the Virginia Board of Education which has general supervision of the public school system.

"Breach of contract" means, for the purpose of Phase Three of these regulations, a teacher failing to honor a contract for the next school year without formal release from that contract from the local board. It does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board which includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between the employee who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with whom the teacher is currently under contract.

"Next school year" means the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal or assistant principal, and (ii) who holds a valid teaching license issued by the board.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in a supervisory capacity, and (ii) who is required by the board to hold a license to be employed in that position.

"Teacher" means a person (i) who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian, and (ii) who holds a valid teaching license.

Article 2. Contracts, Generally.

§ 1.2. Contractual period defined.

Proposed Regulations

The local school board shall define the length of the contract period for each employee. A 10-month contractual period is defined to include 200 days as follows:

1. 180 teaching days or 990 instructional hours (minimum required by law);
2. Ten days for activities such as teaching, planning for the opening of school, evaluation, completing records and reports incident to the closing of each semester or school year, committee assignments, and conferences;
3. Ten days for a continuation of activities under subdivisions 1 and 2 of this section, and such other activities as may be assigned or approved by the local school board.

§ 1.3. Contract to be in writing.

The contract must be in writing. The local school board may utilize prototypes of contract forms provided by the board, as shown in Appendix A, or may choose to develop their own contracts, but in so doing must ensure that the essential elements set forth in Appendix B of these regulations are included.

Article 3.

Annual Contracts, Probationary Period.

§ 1.4. Length of the probationary term.

A probationary term of employment under an annual contract for three years in the same school division is required prior to the issuance of a continuing contract. When continuing contract status has been attained in a school division in the state, another probationary period need not be served in any other school division unless a probationary period not exceeding one year is made a part of the contract of employment.

§ 1.5. Calculating term for first year of teaching.

For the purpose of calculating the three years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

§ 1.6. Probationary period for principal or supervisor.

A person employed as a principal or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve three years in such position in the same school division before acquiring continuing contract status as a principal or supervisor.

§ 1.7. Probationary period when employee separates from service.

If a teacher, principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

§ 1.8. Effect of service outside the Virginia system.

Teaching service outside of the Virginia public school system shall not be counted as meeting in whole or in part the required probationary term.

Article 4.

Continuing Contracts.

§ 1.9. Eligibility for continuing contract.

Only persons regularly employed full time by a school board who hold a valid license as teachers, principals, or supervisors shall be eligible for continuing contract status.

§ 1.10. Continuing contract status when employee separates from service.

If a teacher who has attained continuing contract status separates from service and does not return to teaching in Virginia public schools for a period longer than two years, such person shall be required to begin a new three-year probationary period.

Article 5.

Coaching Contracts.

§ 1.11. Contract to be separate and apart from annual or continuing contract.

The coaching contract shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.

§ 1.12. Termination notice required.

The coaching contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

PART II.

UNIFORM HIRING OF TEACHERS.

Article I.

Purpose.

§ 2.1. Purpose of a uniform hiring process.

The goal for regulations for uniform hiring of teachers is to establish a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates, which are embodied in the three-phase employment process, establish minimum

timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of the locality, and offer professional mobility for teachers.

§ 2.2. Phase One of the three-phase employment process

A. Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year. The end of the phase on April 14 corresponds to the provisions of § 22.1-304 of the Code of Virginia allowing written notice of noncontinuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday.

B. During Phase One, a teacher may apply and be interviewed for employment for the next school year in other school divisions without notice to or permission from the division where he is currently employed.

C. During Phase One, a teacher accepting employment in another division for the next school year must resign by giving written notice to the current employer. The notice should specify that the resignation is applicable for the next school year only.

§ 2.3. Phase Two of the three-phase employment process.

A. Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later. The contract is final when the date of signature and, at a minimum, the salary terms are finally known.

B. During Phase Two, teachers, whether probationary or continuing contract, may seek employment and file applications for the next school year with other school divisions. Teachers may seek employment during this phase without notification to the current employer.

C. During Phase Two, the prospective employer may offer a contract without proof of release from contract from the current employer. The teacher must obtain a written release from the contract with the current employer prior to signing a contract with the prospective employer. Releases should be liberally granted during this phase.

§ 2.4. Phase Three of the three-phase employment process.

A. Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.

B. During Phase Three, teachers may seek employment and file applications for the next school year with other school divisions; however, a prospective employer should not offer a contract to any teacher during Phase Three

until the teacher has secured a written release from the contract with the current employer, and a teacher should not accept a contract until a written release has been secured.

C. A current employer, at its discretion, may release a teacher from the contract. The employer should release teachers for good cause.

D. Good cause may include, but is not limited to, the relocation of the spouse, medical and family emergencies, and position advancement, as opposed to salary advancement.

E. In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches or expresses an intent to breach the contract, the current employer may, within 30 days of the breach, file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or apply other remedies appropriate under law or contract.

V.A.R. Doc. No. R94-241; Filed November 10, 1993, 10:42 a.m.

APPENDIX A

ANNUAL FORM CONTRACT WITH PROFESSIONAL PERSONNEL

THIS ARTICLE OF AGREEMENT, between the SCHOOL BOARD OF _____ (county, city, or town)

Commonwealth of Virginia, ("School Board") and _____ ("Employee").

The School Board agrees to employ and the employee agrees to accept such employment in the position of _____

subject to the authority of the School Board, (administrator, supervisor, principal, teacher, librarian or other instructional staff)

under the supervision and direction of the division superintendent of schools, and agrees to the following conditions:

- 1. The employee: (check one)
- holds a valid Virginia license issued by the Board of Education
- has completed the requirements and has filed a complete application for a Virginia license
- is eligible for a Virginia license and will file a complete application within 90 days of employment
2. The services to be performed hereunder shall begin on _____, 19 __, and continue thereafter as prescribed by the school board.
3. The employee shall perform such pertinent duties during the period of this contract as are deemed necessary by the school board and superintendent for the efficient and successful operation of the school system.
4. The employee shall comply with all school laws, Board of Education regulations, and all regulations made by the school board in accordance with law and Board of Education regulations, and shall make promptly and accurately all reports required by the division superintendent of schools.
5. The employee agrees to abide by the provisions of the Constitution of Virginia and the Constitution of the United States.
6. The division superintendent shall have authority to assign employees to their respective positions in the school wherein they have been placed by the school board and may, with the approval of the school board, reassign any employee to any school within the division during the term of this contract; provided no change or reassignment shall adversely affect the salary of the employee under this contract.
7. The reassignments of administrative or supervisory personnel to a teaching position shall be in accordance with Section 22.1-294 of the Code of Virginia (1950), as amended.
8. Before the superintendent recommends to the school board the nonrenewal of the contract of an employee who has not achieved continuing contract status, the superintendent shall notify the employee of the proposed recommendation in accordance with Section 22.1-304 of the Code.
9. The school board, upon recommendation of the division superintendent, reserves the right to dismiss, suspend, or place on probation the employee, paying for services rendered in accordance with this agreement to date of dismissal.
10. In case schools are closed temporarily as a result of an epidemic or for other necessary cause, the said board may require such loss of time to be made up within the school term or may extend the school term.
11. This contract shall not operate to prevent discontinuance of employment as provided or allowed by law.
12. The employee may request that the school board release the employee from the terms of this contract by giving the school board two weeks notice in writing and setting forth therein the reason considered just cause for resignation. In the event the school board declines to grant the request for release, and the

employee breaches the contract, the school board may pursue remedies prescribed by the Board of Education or as described elsewhere in this contract consistent with law.

13. The school board agrees to pay employee for the duration of this contract _____, payable:

(a) in _____ installments for services rendered, payable by the first day of each calendar month or as soon thereafter as possible.

or

(b) in accordance with schedule under "Special Covenants."

14. The school board shall not be obligated to the salary terms above unless and until sufficient funds are provided to fulfill the obligations of the school board by the appropriating body; provided, further, that the school board shall give the employee written notice of such approval or disapproval, as the case may be, within seven (7) days of such action.

15. In the event this contract is terminated by mutual consent prior to the end of the contract period, payment will be made for services rendered on a daily basis to be determined by dividing the salary stipulated in this contract by the number of days officially covered under the provisions of this contract.

16. The school board shall deduct monthly from the salary due the employee the computed amount due the Virginia Retirement System (including State-supported group insurance), and applicable state and federal statutes.

17. SPECIAL COVENANTS:

This contract shall at all times be subject to any and all laws, regulations, and policies existing during the term of the contract relating to conditions of employment such as leave, salaries, and length of school terms. Failure of the employee to fulfill this contract shall constitute sufficient grounds for the termination of the contract by the school board.

The parties agree to the terms of this contract effective this _____ day of _____, 19 _____.

_____, (L.S.)
Chairman of the Board

_____, (L.S.)
Employee

_____, (L.S.)
Clerk of the Board

Proposed Regulations

10. This contract shall not operate to prevent discontinuance of a position as provided by law.
11. This contract shall be null and void and of no further force or effect and be terminated if, at any point during the term of this contract, the employee does not hold a valid license, as defined in regulations of the Board of Education.
12. The employee may be granted a leave of absence as provided by law, Board of Education regulations, and/or the policies of the local school board.
13. The school board, shall deduct monthly from the salary due the employee the computed amount due the Virginia Supplemental Retirement System (including State-supported group insurance), and other applicable state and federal states.
14. SPECIAL COVENANTS:

This contract shall at all times be subject to any and all laws, regulations, and policies now existing or enacted during the term of the contract relating to conditions of employment such as leave, salaries, and length of school terms. Failure of the employee to fulfill this contract shall constitute sufficient grounds for the termination of the contract by the school board.

The parties agree to the terms of this contract effective, this _____ day of _____, 19____

 (L.S.) Chairman of the Board

 (L.S.) Employee

 (L.S.) Clerk of the Board

CONTINUING FORM CONTRACT WITH PROFESSIONAL PERSONNEL

State law provides for continuing contracts with local school boards for members of the instructional staff who are qualified by the terms of said law, and/or regulations of the Board of Education; therefore, this article of agreement, between the school board of _____ (county, city, or town) _____ Commonwealth of Virginia, ("the School Board"), and _____ ("Employee"), The school board agrees to employ and the employee agrees to accept such employment in the position of _____ (assistant, supervisor, principal, teacher, director or other instructional staff) subject to the authority of the school board, under the supervision and direction of the division superintendent of schools, and agrees to the following conditions:

1. The employee agrees to abide by the provisions of the Constitution of Virginia and the Constitution of the United States.
2. The services to be performed hereunder shall begin on _____, 19____ and continue thereafter as prescribed by the school board.
3. During the term of this contract, the school board agrees to pay the employee an annual salary consistent with provisions of state law, plus any additional salary, but not less than the local scale, as may be determined by the school board in the local salary schedule as duly adopted from time to time; provided, however, that the school board shall not be obligated hereunder unless and until sufficient funds to meet the obligations of the school board hereunder have been approved by the approving body; provided, further, that the school board shall give the employee written notice of such approval or disapproval, as the case may be, within seven (7) days of such action.
4. This contract as are deemed necessary by the school board and superintendent for the efficient and successful operation of the school system.
5. The division superintendent shall have authority to assign employees to their respective positions in the school wherein they have been placed by the school board, and may, with the approval of the school board, reassign any employee to any school within the division during the term of this contract; provided no change or reassignment shall adversely affect the salary of the employee under this contract.
6. The reassignment of administrative or supervisory personnel to a teaching position shall be in accordance with Section 22.1-294 of the Code of Virginia (1950), as amended.
7. The employee shall comply with all school laws, Board of Education regulations, and all rules and regulations made by the school board in accordance with law and Board of Education regulations, and shall make promptly and accurately all reports required by the division superintendent of schools.
8. The length of the school term and the annual period of service shall be fixed by the school board in accordance with law.
9. This contract of employment shall remain in full force and effect from year to year, subject to all the provisions herein set forth, unless modified by mutual consent in writing by the parties to this contract. The employee may be dismissed, suspended, or placed on probation as provided by law. The school board, upon recommendation of the division superintendent, reserves the right to dismiss, suspend, or place on probation the employee, paying for services rendered in accordance with this agreement to date of dismissal; in case schools are closed temporarily as a result of an epidemic or for other necessary cause, the school board may require such loss of time to be made up within the school term or may extend the school term; in the event this contract is terminated, payment will be made for services actually rendered on a daily rate basis.

APPENDIX B

LISTING OF ESSENTIAL CONTRACT ELEMENTS

INTRODUCTORY STATEMENT

This list of essential contract elements, pending approval by the Office of the Attorney General, would satisfy the statutory requirement of a form prescribed by the Board of Educator as required by §22.1-302 of the Code of Virginia (1960) as amended. The text of the essential elements can be used by certain local school divisions who prefer to develop contracts specific to their circumstances or situations. This list of essential elements is provided as an alternative to the formal prototypes available. These elements, after review and approval by the Office of the Attorney General, and compliance with the requirements of the Administrative Process Act, will be incorporated into the appropriate section of Board regulations.

ANNUAL CONTRACTS

Any annual contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum, the following provisions:

- A statement identifying the names and titles of the parties to the contract.
- A statement of the licensure requirements for the position or positions thereto.
- A statement of the beginning date of service, the term, and the effective date of the contract.
- A statement of the duties to be performed under the contract.
- A statement (or statements) of expectations of the employee with regard to compliance with local, state, and/or federal statutes, regulations and constitutional provisions.
- A statement (or statements) of the provisions concerning assignment, reassignment, termination, suspension, probation, or resignation of the employee, and mutual termination of the contract.
- A statement of the penalties for the employee's failure to comply with the terms of the contract.
- A statement identifying the school term.
- A statement of the conditions under which the school term and/or contract may be extended.
- A statement of the amount of compensation due the employee and the method of payment.
- A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

ATHLETIC COACHING CONTRACT WITH SCHOOL PERSONNEL

AGREEMENT, between the SCHOOL BOARD OF _____ (county, city, or town) (School Board) and _____ (Coach).

The school board and the coach agree that the coach will perform the following athletic coaching assignment _____ subject to the _____ (football, basketball, baseball, track, or other specified athletic activity)

authority of the School Board, under the supervision and direction of the superintendent or designee, subject to the Code of Virginia and subject to the following conditions:

1. The coach shall perform such pertinent duties during the period of this assignment as are deemed necessary by the school board and the superintendent or designee for the successful and efficient operation of the school system.
2. The coach shall comply with all applicable laws, Virginia Board of Education regulations, school board policies, and regulations of the superintendent now or hereafter in effect.
3. This agreement may be terminated by either party with or without cause by providing reasonable notice in writing to the other party. Such reasonable notice may be set forth in the Special Covenants below.
4. The school board agrees to pay the coach \$ _____ as monetary compensation for the duration of this agreement, payable in accordance with established payroll procedures. The coach agrees and acknowledges that this employment does not qualify as service toward continuing contract eligibility, does not constitute teaching experience, and does not create any rights of any type in favor of the coach other than the compensation referred to herein.
5. This agreement is for an athletic coaching assignment from _____ 19 _____ to _____ 19 _____ commencing _____ 19 _____ (month/day) (month/day)
6. The school board shall deduct from the monetary compensation all deductions required by law.
7. Termination of this agreement by either party shall not, in itself, constitute cause for termination of any separate teaching contract between the coach and the school board.
8. SPECIAL COVENANTS:

The parties agree to the terms of this contract effective this _____ day of _____, 19 _____.

 Coach

 Chairman of the School Board

 Clerk of the School Board

CONTINUING CONTRACTS

Any continuing contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum the following provisions:

- All of the provisions required for the annual contract.
- A statement explaining the continuing nature of the contract.

COACHING CONTRACTS

Any athletic coaching contract with school personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include the following provisions:

- A statement identifying the names and titles of the parties to the contract.
- A statement of the duties to be performed under the contract.
- A statement of the amount of compensation due the employee and the method of payment.
- A statement (or statements) of expectations of the employee with regard to compliance with local, state, and/or federal statutes, regulations and constitutional provisions.
- A statement setting forth conditions for termination of the contract.
- A statement identifying the limitations on the use of the experience toward length of service, substitution for teaching experience and rights in favor of the coach.
- A statement of the beginning date of service, the term, and the effective date of the contract.
- A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

Proposed Regulations

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title of Regulation: VR 304-01-01. Public Participation Guidelines.

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until 4 p.m. on January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 62.1-195.1 F of the Code of Virginia states that the Department of Environmental Quality (DEQ) shall, in conjunction with other state agencies and in conformance with the APA, develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands DEQ's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the

regulation from the standpoint of the public's health, safety or welfare; and, requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed regulation presents a clearer, expanded set of guidelines for use by DEQ and the public during the adoption, amendment, or repeal of regulations; it requires DEQ to present additional information for use by the public in understanding and commenting on regulatory actions; and it is consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this regulation since the proposal only imposes requirements on DEQ. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on DEQ. Localities should benefit from the adoption in that the guidelines require DEQ to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed guidelines will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. The proposed guidelines are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed regulation contains a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from

five persons during the associated comment period; expands DEQ's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 304-01-01. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Agency" means the Department of Environmental Quality including staff, etc., established pursuant to Virginia law that implements programs and provides administrative support to the approving authority.

"Approving authority" means the Director of the Department of Environmental Quality established pursuant to Virginia law as the legal authority to adopt regulations.

"Director" means the Director of the Department of Environmental Quality or his designee.

"Environmental Protection Law" means the provisions found in Virginia statutory law authorizing the approving authority, director or agency to make regulations or containing procedural requirements thereof.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Virginia Environmental Protection Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4 1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation.

C. Any person may petition the director 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;

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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 director shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual and organization, or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

c. A brief statement as to the need for regulatory action.

d. A brief description of alternatives available, if any, to meet the need.

e. A request for comments on the intended regulatory action, to include any ideas to assist the agency in the development of any proposal.

f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the director specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

E. The agency shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may:

complete the draft proposed regulation and any supporting documentation required for review. If the participatory approach is being used, the draft regulation shall be developed in consultation with the participants. A summary or copies of the comments received in response to the NOIRA shall be distributed to the participants during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A request for comments on the costs and benefits of the proposal.

3. The identity of any locality particularly affected by the proposed regulation.

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments

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received in response to the NOPC and the agency's response to the comments received. The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation. The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to the effective date of this regulation shall be processed in accordance with the emergency Public Participation Guidelines VR 304-01-01 which are effective from June 29, 1993, until June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.

B. This regulation when effective shall supersede and repeal the emergency Public Participation Guidelines (VR 304-01-01) which became effective June 29, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to the effective date of this regulation shall be processed in accordance with this regulation.

VA.R. Doc. No. R94-247; Filed November 10, 1993, 11:25 a.m.

BOARD FOR HEARING AID SPECIALISTS

Title of Regulation: VR 375-01-1. Public Participation Guidelines (REPEALING).

VA.R. Doc. No. R94-224; Filed November 9, 1993, 2:47 p.m.

Title of Regulation: VR 375-01-01:1. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted until January 31, 1994.

(See Calendar of Events section

for additional information)

Basis: Sections 9-6.14:7.1 and 54.1-201 of the Code of Virginia provide the Board for Hearing Aid Specialists 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 hearing aid specialists.

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 hearing aid specialists 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 Hearing Aid Specialists on June 24, 1993. The proposed Public Participation Guidelines for the Board for Hearing Aid Specialists contain substantially similar language as 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 hearing aid specialists. 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 Public Participation Guidelines affect approximately 1,350 licensed hearing aid specialists. 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 Hearing Aid Specialists Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of hearing aid specialists. 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 375-01-01:1. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Agency" or "board" means the Board for Hearing Aid Specialists.

"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

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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. No. R94-225; Filed November 9, 1993, 2:47 p.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: VR 390-01-01. Public Participation Guidelines.

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-2205 of the Code of Virginia authorizes the board to adopt rules necessary to carry out its powers and duties, including, at a minimum, criteria and procedures for the designation of historic landmarks and historic districts.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety and welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a

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clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The board does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impact: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the board. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Localities: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of

the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 390-01-01. Public Participation Guidelines.

§ 1. Definitions.

A. 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.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

"Formal hearing" means board or department processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality that bears any identified disproportionate material impact that would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) any combination thereof in the formation and development of regulations for board consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, held in

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conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14.7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision by the board is pending.

“Public meeting” means an informal proceeding conducted by the department or the board in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

B. Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14.4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14.4.1 C).

B. At the discretion of the board or the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. Any person may petition the board for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

If the board determines not to act upon a petition, he The board shall provide a written response to such petition within 180 days from receipt of the petition.

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization, or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may periodically be requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization or at the discretion of the agency when mail is returned as undeliverable.

B. Whenever the board so directs or upon its own initiative, the department may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the board specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:

1. Proceed without using the participatory approach if the board specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from five persons during the associated comment period indicating that the department should use the participatory approach, the agency shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A description of the subject matter of the

planned regulation.

b. A description of the intent of the planned regulation.

a. c. A brief statement as to the need for regulatory action ; .

b. d. A brief description of alternatives available, if any, to meet the need.

*e. e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the ~~drafting and formation of any proposed regulation~~ developed pursuant to the NOIRA *development of any proposal* .*

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall be required only when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

a. The department shall hold at least one public meeting whenever the board considers the adoption, amendment or repeal of any regulation unless the board specifically authorizes the department to proceed without holding a public meeting.

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of The Virginia Register of Regulations , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

E. The department shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s)

established under subsection A of this section.

F. After consideration of public comment, the department may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If ~~an ad hoc advisory group has been established~~ *the participatory approach is being used* , the draft regulation shall be developed in consultation with ~~such group the participants~~ . A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation. A summary or copies of the comments received in response to the NOIRA shall also be distributed to the board.

G. Upon approval of the draft proposed regulation by the board, the department shall publish ~~the NOPC a~~ *Notice of Public Comment (NOPC)* and the proposal for public comment.

H. The NOPC shall include the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

~~2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.~~

~~3. 2. A request for comments on the costs and benefits of the proposal.~~

~~3. The identity of any locality particularly affected by the proposed regulation.~~

4. A statement that an analysis of the following has been conducted by the ~~agency department~~ and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ *the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare* .

b. A statement of estimated impact:

(1) ~~Number Projected number~~ and types of regulated entities or persons affected.

(2) Projected cost , *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if

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possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or upon other organizations in Virginia.

e. *A description of provisions of the proposed regulation that are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.*

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the board will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. ~~(In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. *In those cases where the department or board elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

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

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations;

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the NOPC and the department's response to the comments received. *The department shall send a draft of the summary of comments to all commenters on the proposed regulation at least five days before final adoption of the regulation.* The department shall submit the summary and agency response and, if requested, submit the full comments to the board. The summary, the department's response, and the comments shall become a part of the department file and after final action on the regulation by the board, made available, upon request, to interested persons.

L. If the department determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the board, the department shall present to the board for its consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register prior to February 10, 1993, the effective date of this regulation shall be processed in accordance with the emergency Public Participation Guidelines specified in Chapter 656 of the Acts of Assembly of 1989 VR 390-01-01 which are effective from June 25, 1993, until June 24, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation when effective shall supersede and repeal the emergency regulation, VR 390-01-01 Public Participation Guidelines, which became effective on June 25, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register prior to February 10, 1993, the effective date of this regulation shall be processed in accordance with this regulation (VR 390-01-01) .

V.A.R. Doc. No. R94-208; Filed November 8, 1993, 2:44 p.m.

DEPARTMENT OF HISTORIC RESOURCES

Title of Regulation: VR 392-01-01. Public Participation Guidelines.

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

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 10.1-2202 of the Code of Virginia authorizes the Director of the Department of Historic Resources to adopt rules necessary to carry out his powers and duties, including, at a minimum, criteria and procedures for nominating properties to the National Park Service for inclusion in the National Register of Historic Places.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety and welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification

for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the department and the public during the adoption, amendment, or repeal of regulations; they require the department to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The department does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impact: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the department. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Localities: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the department. Localities should benefit from the adoption in that the guidelines require the department to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory

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approach upon receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 392-01-01. Public Participation Guidelines.

§ 1. Definitions.

A. 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.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources or his designee.

"Formal hearing" means department processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality that bears any identified disproportionate material impact that would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the department, or (iv) any combination thereof in the formation and development of regulations for the director's consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the

discretion of the director.

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

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision by the director is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

B. Unless specifically defined in Chapters 22, 23, and 24 of Title 10.1 of the Code of Virginia or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General provisions.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

~~B. At the discretion of the director, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. C. Any person may petition the director 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;

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5. Statement of need and justification for the proposed action;

6. Statement of impact on the petitioner and other affected persons; and

7. Supporting documents, as applicable.

If the director determines not to act upon a petition, he. The director shall provide a written response to such petition within 180 days from receipt of the petition.

§ 3. Public participation procedures.

A. The department shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the department. In addition, the department, at its discretion, may add to any list any person, organization, or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may periodically be requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization or at the discretion of the agency when mail is returned as undeliverable.*

B. The department may commence the regulation adoption process upon its own initiative and proceed to draft a proposal according to these procedures.

C. The department shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the director specifically authorizes the department to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. *The department shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:*

1. Proceed without using the participatory approach if the director specifically authorizes the department to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the department should use the participatory approach to assist the department in the development of the proposal. If the department receives written responses from five persons during the associated comment period indicating that the department should use the participatory approach, the agency shall use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The department shall issue a notice of intended regulatory action (NOIRA) whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A description of the subject matter of the planned regulation.

b. A description of the intent of the planned regulation.

a. c. A brief statement as to the need for regulatory action ; .

b. d. A brief description of alternatives available, if any, to meet the need.

e. e. A request for comments on the intended regulatory action, to include any ideas to assist the department in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal .

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives.

g. A statement of the department's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.

h. A statement inviting comment on whether the department should use the participatory approach to assist the department in the development of any proposal. Including this statement shall be required only when the department makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. During the public comment period for NOIRAs, the department shall conduct public meetings as follows:

a. The department shall hold at least one public meeting whenever the director considers the adoption, amendment or repeal of any regulation unless the director specifically authorizes the department to proceed without holding a public meeting.

b. In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication of The Virginia Register of Regulations , time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

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E. The department shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.
2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public comment, the department may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. ~~If an ad hoc advisory group has been established the participatory approach is being used~~, the draft regulation shall be developed in consultation with ~~such group the participants~~. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation.

G. Upon approval of the draft proposed regulation by the director, the department shall publish ~~the NOPC a~~ Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

~~2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.~~

~~3. 2. A request for comments on the costs and benefits of the proposal.~~

~~3. The identity of any locality particularly affected by the proposed regulation.~~

4. A statement that an analysis of the following has been conducted by the ~~agency department~~ and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.~~

b. A statement of estimated impact:

(1) ~~Number~~ Projected number and types of regulated entities or persons affected.

(2) Projected cost, expressed as a dollar figure or range, to regulated entities (and to the public, if

applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the department for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or upon other organizations in Virginia.

e. A description of provisions of the proposed regulation that are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the department believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the department will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. ~~(In those cases in which the department elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia.)~~ The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the department determines will best facilitate input from interested persons. *In those cases where the department elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14:8 of the Administrative Process Act.*

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

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Register of Regulations.

J. The department shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations;

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the department may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The department shall prepare a summary of comments received in response to the NOPC and the department's response to the comments received. *The department shall send a draft of the summary of comments to all commenters on the proposed regulation at least five days before final adoption of the regulation.* Both the summary and the comments shall become a part of the department file and after final action on the regulation by the director, made available, upon request, to interested persons.

L. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register prior to ~~February 10, 1993~~, the effective date of this regulation shall be processed in accordance with the emergency Public Participation Guidelines specified in ~~Chapter 656 of the Acts of Assembly of 1989 VR 392-01-01:1~~ which are effective from June 25, 1993, until June 24, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation when effective shall supersede and repeal the emergency regulation, VR 392-01-01:1 Public Participation Guidelines, which became effective on June 25, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register prior to ~~February 10, 1993~~, the effective date of this regulation shall be processed in accordance with this regulation (~~VR 392-01-01~~) .

VA.R. Doc. No. R94-209; Filed November 8, 1993, 2:46 p.m.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is exempt from the Administrative Process Act

(§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22, it is required to publish all proposed and final regulations.

Title of Regulation: VR 400-02-0017. Rules and Regulations for HUD-Insured Home Equity Conversion Mortgage Loans to Elderly Persons of Low and Moderate Income.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until December 10, 1993.

(See Calendar of Events section for additional information)

Basis: Section 36-55.30:3 of the Code of Virginia empowers the Virginia Housing Development Authority (authority) to adopt, amend and repeal regulations to effectuate the general purposes of the authority.

Purpose: To amend the rules and regulations governing the program of the authority for the making of HUD-insured home equity conversion mortgage loans to elderly persons of low and moderate income to (i) change origination fees consistent with amounts permitted to be financed by the federal regulations; (ii) restate the definition of "area median family income" in a manner consistent with the federal regulations; and (iii) raise the maximum gross family income limits for the program.

Substance: Recent changes in the federal regulations recognize that a 1.0% (based upon maximum claim amount) origination fee is not sufficient, and a fee not to exceed \$1,800 is now permitted and may be financed. The authority has, in the past, allowed its leading agents to retain the entire 1.0% origination fee, and the authority has fully absorbed its cost of program administration. Nevertheless, the 1.0% origination fee has been insufficient to cover the actual costs of loan origination for the authority's lending agents since costs under this program are higher than for other authority single family loan programs due to more direct communication with borrowers and more complex loan closing documents and procedures. Additionally, to permit the wider availability of loans under the program, maximum gross family income limits will be increased.

Issues: The increase in fees will result in higher long-term costs to borrowers, but will not increase their out-of-pocket expenses since the full amount of the fee increase can be financed (loan repayment is fully deferred so long as the borrower continues to live in his home). The increase will enable the authority and lenders participating in the program to cover their administrative expenses, which will, in turn, enable the authority to continue administering the program and will increase the number of lenders willing to participate in the program as the authority's lending agents. The increase in income limits will allow more elderly persons and families to receive loans under the program. Since funds for this program are not presently limited, such increase in income limits will not affect the

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availability of this program for those currently eligible thereunder.

Impact: The authority expects that, upon adoption of the amendments, the number of persons and families served under the program annually will increase by 100. Planned marketing efforts are anticipated to additionally increase the number of persons and families served bringing the total to 250 annually. The increase in fees is expected to average \$1,000 per borrower, resulting in annual additional costs for all borrowers of \$250,000 upon closing of their loans. The authority does not expect that any other significant costs will be incurred for the implementation of, and compliance with, the amendments.

Summary:

The proposed amendments (i) increase the origination fee charged to borrowers under the program from 1.0% of the maximum claim amount (the lesser of the home's appraised value or the FHA 203 (b) (2) mortgage insurance limit) to an amount not to exceed the maximum amount permitted in the federal regulations; (ii) change the maximum gross family income limit for borrowers under the program from 80% of area median family income to amounts equal to the income limits in effect under or pursuant to the authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; and (iii) restate the definition of the term "area median family income" to be the "applicable median family income" as defined in Section 143 (f) (4) of the Internal Revenue Code.

VR 400-02-0017. Rules and Regulations for HUD-Insured Home Equity Conversion Mortgage Loans to Elderly Persons of Low and Moderate Income.

PART I. GENERAL PROVISIONS.

§ 1.1. General.

The following rules and regulations will be applicable to home equity conversion mortgage loans insured by the U.S. Department of Housing and Urban Development ("HUD") which are made or are proposed to be made by the Virginia Housing Development Authority ("authority") to enable low and moderate income elderly homeowners to convert a portion of their accumulated home equity into cash funds in order to continue living independently in their own homes.

Home equity conversion mortgage loans may be made pursuant to these rules and regulations only if and to the extent that the authority has made or expects to make funds available therefor.

Notwithstanding anything to the contrary herein, the executive director is authorized with respect to any home equity conversion mortgage loan hereunder to waive or

modify any provisions of these rules and regulations where deemed appropriate by him for good cause, to the extent not inconsistent with the Act.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the mortgagor under the agreements and documents executed in connection with the mortgage loan.

The rules and regulations set forth herein are intended to provide a general description of the authority's program requirements and are not intended to include all actions involved or required in the originating and administration of home equity conversion mortgage loans under the authority's HUD-insured home equity conversion mortgage loan program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time.

§ 1.2. Originating agents.

A. Approval.

The originating of home equity conversion mortgage loans and the processing of applications for the making thereof in accordance herewith may, at the authority's discretion, be performed through commercial banks, savings and loan associations and private mortgage bankers that are approved as originating agents ("originating agents") of the authority under the authority's rules and regulations for single family loans to persons and families of low and moderate income.

Each originating agent shall enter into an originating agreement ("originating agreement") with the authority containing such terms and conditions as the executive director shall require with respect to the origination, or origination and processing, of home equity conversion mortgage loans hereunder.

Originating agents shall maintain adequate books and records with respect to home equity conversion mortgage loans which they originate or originate and process, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents for originating or originating and processing home equity conversion mortgage loans hereunder shall be established from time to time by the executive director and shall be set forth in the originating agreements applicable to such originating agents.

B. Selection of limited number of originating agents.

The executive director may limit the number of originating agents based upon such factors as he deems relevant, including any of the following:

1. The need and demand for the financing of HUD-insured home equity conversion mortgage loans in various geographic areas of the Commonwealth;
2. The availability of HUD-insured home equity conversion mortgage loans from private lenders in various geographic areas of the Commonwealth;
3. The availability of HUD-certified counseling for applicants for HUD-insured home equity conversion mortgage loans in various geographic areas of the Commonwealth;
4. The need for the expeditious commitment and disbursement of home equity conversion mortgage loans;
5. The cost and difficulty of originating and processing HUD-insured home equity conversion mortgage loans; and
6. The time and cost of training originating agents.

The executive director shall select the limited number of originating agents in such manner, for such periods, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. In so selecting originating agents, the executive director may consider such factors as he deems relevant, including the capability, history and experience of any lender seeking selection and the amount of the origination fee requested by any such lender.

C. Allocation of funds.

The executive director shall allocate funds for the making or financing of home equity conversion mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to home equity conversion mortgage loan applicants on a first-come, first-serve or other basis and/or (ii) to originating agents for the origination of home equity conversion mortgage loans to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for home equity conversion mortgage loans;
2. The need and demand for the financing of home equity conversion mortgage loans with such funds in the various geographical areas of the Commonwealth;

3. The cost and difficulty of administration of the allocation of funds; and

4. The capability, history and experience of any originating agents who are to receive an allocation.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

D. Originating guide.

The executive director is authorized to prepare and from time to time revise an originating guide which shall set forth the procedures to be followed by all originating agents responsible for the origination and/or processing of mortgage loans under the applicable originating agreements. Copies of the originating guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide.

E. Making of new mortgage loans.

Home equity conversion mortgage loans shall be made by the authority directly to borrowers with the assistance and services of its originating agents. The review of applications for such home equity conversion mortgage loans and the terms and conditions relating to such home equity conversion mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement, the originating guide, the Act and these rules and regulations.

If the applicant and the application for a home equity conversion mortgage loan meet the requirements of the Act and these rules and regulations, the executive director may issue on behalf of the authority a home equity conversion mortgage loan commitment to the applicant, subject to the approval of ratification thereof by the board. Such home equity conversion mortgage loan commitment shall be issued only upon the determination of the authority that such a home equity conversion mortgage loan is not otherwise available from private

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lenders upon reasonably equivalent terms and conditions in the area where the applicant resides. The initial principal limit and term of such home equity conversion mortgage loan, the terms and conditions relating to the disbursement of funds by the authority to the applicant, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director deems necessary or appropriate shall be set forth or incorporated in the home equity conversion mortgage loan commitment issued on behalf of the authority with respect to such home equity conversion mortgage loan.

F. Sale of servicing rights.

The authority may, at its discretion, sell to one or more financial institutions the servicing rights to any home equity conversion mortgage loan made pursuant to these rules and regulations. Such financial institution or institutions shall be selected in such manner, on the basis of such criteria, for such period and subject to such terms and conditions as the executive director shall deem appropriate in order to best accomplish the purposes and goals of the authority.

PART II. LOAN PROCESSING.

§ 2.1. Compliance with HUD and FNMA requirements.

Each home equity conversion mortgage loan must be insured pursuant to the Code of Federal Regulations 24 CFR Parts 200 and 206, as amended (hereinafter the "federal regulations"). These federal regulations impose certain requirements and restrictions on the eligibility of home equity conversion borrowers and residences for insurance by HUD. No loan will be approved or made by the authority unless all of the requirements and restrictions under the federal regulations are met.

The authority intends to sell all of the home equity conversion mortgage loans to the Federal National Mortgage Association ("FNMA"). Therefore, each home equity conversion mortgage loan must satisfy all of the applicable guidelines, requirements, terms and conditions imposed by FNMA.

§ 2.2. Compliance with authority requirements.

A. Location.

The property which is to secure the home equity conversion mortgage loan shall be located entirely within the Commonwealth of Virginia.

B. Citizenship.

Each borrower for a home equity conversion mortgage loan must either be a United States citizen or have a valid and current alien registration card (U.S. Department of Immigration Form 1-551 or U.S. Department of Immigration Form 1-151).

C. Maximum gross family income.

The gross family income of an applicant for an authority home equity conversion mortgage loan may not exceed 80% of the area median family income. *the percentage of the applicable median family income with respect to the residence of the applicant in effect under the authority's Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income (VR 400-02-0003) or, if the foregoing income limit shall be waived by the executive director pursuant to such rules and regulations, such other income limit as shall be specified therein or established pursuant thereto.*

For the purposes hereof, the term "gross family income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

~~For the purposes hereof, the term " area applicable median family income" means the median family income, adjusted for family size, for the area of the Commonwealth in which the residence is located, as established and published from time to time by HUD. shall be as defined in Section 143 (f) (4) of the Internal Revenue Code of 1986, as amended.~~

The authority shall from time to time inform its originating agents by written notification thereto of the foregoing maximum gross family income limits expressed in dollar amounts for each area of the state and each family size. The effective dates of such limits shall be determined by the executive director.

§ 2.3. Terms and conditions of home equity conversion mortgage loans.

A. Compliance with HUD and FNMA requirements.

The provisions, terms and conditions of each authority home equity conversion mortgage loan shall conform to all requirements under the federal regulations and all guidelines and requirements of FNMA for the purchase of the home equity conversion mortgage loan.

B. Interest rate.

The interest rate to be charged on each home equity conversion mortgage loan shall be an adjustable rate

which shall be established and increased or decreased at the times and in the manner specified by the guidelines and requirements of FNMA consistent with the federal regulations.

C. Fees and charges at closing.

Pursuant to the federal regulations, the following fees and charges incurred in connection with the origination of the home equity conversion mortgage loan shall be collected from the borrower, either in cash at the time of closing or through an initial payment under the home equity conversion mortgage loan:

1. An origination fee equal to 1.0% of the maximum claim amount as defined in such amount as shall be determined by the executive director, but in no event greater than the maximum amount permitted in the federal regulations;
2. Recording fees and recording taxes or other charges incident to the recordation of the mortgage;
3. Credit report fee;
4. Survey fee, if required;
5. Title examination fee;
6. Title insurance charge;
7. Appraisal fee; and
8. Such other charges as incurred in closing the home equity conversion mortgage loan and as approved by HUD.

D. Monthly servicing fee.

The borrower shall be charged a fixed monthly servicing fee in an amount approved by HUD. The servicing fee shall be added to the outstanding balance of the home equity conversion mortgage loan in accordance with the procedures and requirements established in the federal regulations.

§ 2.4. Application package.

The originating agent shall submit to the authority for its review such documents and forms as the authority shall require to determine compliance with the requirements imposed by the federal regulations, the guidelines and requirements of FNMA for purchase of the home equity conversion mortgage loan, and the provisions of these rules and regulations.

§ 2.5. Firm commitment.

A. General.

The authority will review the application package

submitted by the originating agent and, if and when approved, prepare a submission package to HUD for a firm mortgage insurance commitment. Upon issuance by HUD of a firm mortgage insurance commitment, the authority will issue a mortgage loan commitment to the borrower. The mortgage loan commitment must be accepted and signed by the applicant prior to closing of the home equity conversion mortgage loan. The term of a mortgage loan commitment may be extended in certain cases upon written request by the applicant and approval by the authority.

B. Loan rejection.

If the application fails to meet any of the standards, criteria and requirements herein, a rejection letter will be issued by the authority. In order to have the application reconsidered, the applicant must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, any and all credit documentation cannot be more than 90 days old and any appraisal not more than six months old.

§ 2.6. Loan settlement.

A. Loan closing.

Upon the applicant's acceptance of the mortgage loan commitment, the closing instructions and documents will be sent to the closing attorney.

When the authority has determined that all closing requirements have been or will be satisfied, it will approve closing and, an initial payment check will be sent to the closing attorney together with any additional closing instructions. The closing attorney may disburse the initial payment only after he or she has conducted the loan closing and recorded all necessary documents, including the deed of trust securing repayment of the home equity conversion mortgage loan and in all other respects is in a position to disburse the initial payment in accordance with the commitment and the authority's instructions to the closing attorney.

B. Post-closing requirements.

Any fees and charges to be paid in cash by the borrower and all closing documents shall be forwarded to the authority within such time period or periods as the authority shall require.

V.A.R. Doc. No. R94-243; Filed November 10, 1993, 11:17 a.m.

MARINE RESOURCES COMMISSION

Title of Regulation: VR 450-01-0045. Public Participation Guidelines.

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

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Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. In addition, § 28.2-103 of the Code of Virginia authorizes the commission to promulgate regulations and guidelines necessary to carry out the provisions of Title 28.2.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a regulation to respond to citizens' comments. The proposed regulatory action is also necessary to replace emergency guidelines which became effective June 30, 1993.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the commission's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of habitat regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the commission and the public during the adoption,

amendment, or repeal of habitat regulations; they require the commission to present additional information for use by the public in understanding and commenting on regulatory actions; and, they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the commission. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the commission. Localities should benefit from the adoption in that the guidelines require the commission to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the commission's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of habitat regulations; expands the information required in the Notice of Intended Regulatory Action to include a

description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and, requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 450-01-0045. Public Participation Guidelines.

§ 1. Authority.

Sections 9-6.14:7.1 and 28.2-103 of the Code of Virginia.

§ 2. I. Definitions.

A. 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.

"Commission" means the Marine Resources Commission.

"Commissioner" means the Commissioner of Marine Resources or his designee.

"Division" means the Habitat Management Division of the commission.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the division, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decision as to the membership of the group shall be at the discretion of the commissioner.

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

"Public hearing" means an informal proceeding, similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held in conjunction with the Notice of Public Comment to afford persons an opportunity to submit views and data relative to regulations on which a decision of the commission is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

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

§ 3. 2. General.

A. The procedures in § 4 3 of this regulation shall be used by the division for soliciting the input of interested persons in the initial formation and development, ~~revision~~ amendment, or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempt from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

~~B. At the discretion of the commission, the procedures in § 4 may be supplemented to provide additional public participation in the regulation adoption process.~~

~~C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.~~

~~D. C. Any person may petition the commission 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;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and

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7. Supporting documents, as applicable.

The commission shall provide a written response to such petition within 180 days from the date the petition was received.

§ 4. 3. Public participation procedures.

A. The division shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment, or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.*

B. Whenever the commission so directs or upon its own initiative, the division may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. ~~The commissioner shall form an ad hoc advisory group or utilize a standing advisory committee to assist the division in the drafting and formation of the proposal unless the commission specifically authorizes the division to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. The division shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:~~

1. Proceed without using the participatory approach if the commission specifically authorizes the division to proceed without using the participatory approach.

2. Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the division should use the participatory approach to assist the division in the development of the proposal. If the division receives written responses from at least five persons during the associated comment period indicating that the division should use the participatory approach, the division will use the participatory approach requested. Should different approaches be requested, the commissioner shall determine the specific approach to be utilized.

D. ~~The division shall issue a notice of intended regulatory action (NOIRA)~~ NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include at least the following:

a. A description of the subject matter of the planned regulation,

b. A description of the intent of the planned regulation,

a. c. A brief statement as to the need for regulatory action,

b. d. A brief description of alternatives available, if any, to meet the need,

e. e. A request for comments on the intended regulatory action, to include any ideas to assist the division in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal ,

d. f. A request for comments on the costs and benefits of the stated alternatives or other alternatives ; ,

g. A statement of the division's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations,

h. A statement inviting comment on whether the division should use the participatory approach to assist the department in the development of any proposal. Including this statement shall only be required when the division makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The division shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the commission specifically authorizes the division to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations , time and place of the public meeting(s).

3. The public comment period for NOIRA's under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

E. The division shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

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F. After consideration of public input, the division may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If ~~an ad hoc advisory group~~ has been established *the participatory approach is being used*, the draft regulation shall be developed in consultation with ~~such group~~ *the participants*. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the commission.

G. Upon approval of the draft proposed regulation by the commission, the division shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location where copies of the draft may be obtained, and name, address and telephone number of the individual to contact for further information about the proposed regulation.

~~2. A description of provisions of the proposed regulation.~~

~~3. 2. A request for comments on the costs and benefits of the proposal.~~

~~3. The identity of any locality particularly affected by the proposed regulation.~~

4. A statement that an analysis of the following has been conducted by the ~~agency division~~ and is available to the public upon request:

a. Statement of purpose: ~~Why the regulation is proposed and the desired end result or objective of the regulation; the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.~~

b. Estimated impact.

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost, *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where the ~~agency division~~ is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member(s) of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses, as defined in § 9-199 of the Code of Virginia, or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, within two years after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The time, date and location of at least one public hearing held in conformance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. The *public hearing(s)* may be held at any time during the public comment period and, whenever practicable, no less than ~~10~~ 15 days prior to the close of the public comment period. In those cases in which the commission elects to conduct ~~an evidential~~ *a formal* hearing, the notice shall indicate that the ~~evidential~~ *formal* hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia. The *public hearing(s)* may be held in such location(s) as the commission determines will best facilitate input from interested persons.

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

J. The division shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation

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published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The division shall prepare a summary of comments received in response to the NOPC and the division's response to the comments received. *The division shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The division shall submit the summary and agency response and, if requested, submit the full comments to the commission. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the commission, made available upon request, to interested persons.

L. If the division determines that the process to adopt, amend or repeal any regulation should be terminated after the approval of the draft regulation by the commission, the division shall present to the commission for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 5. 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to ~~January 1, 1993~~, *the effective date of this regulation shall be processed in accordance with the emergency amendments to VR 450-01-0045, Public Participation Guidelines, which are effective June 2, 1987 from June 29, 1993, until June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations.*

B. *This regulation when effective shall supersede and repeal emergency amendments to VR 450-01-0045 Public Participation Guidelines which became effective on June 29, 1993.* All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to ~~January 1, 1993~~, *the effective date of this regulation shall be processed in accordance with this revised regulation.*

VA.R. Doc. No. R94-242; Filed November 10, 1993, 11:20 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-03-3.1100. Amount, Duration and Scope of Services.

VR 460-03-3.1102. Case Management Services.

VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with

Mental Retardation.

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

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

Public Hearing Date: N/A – Written comments may be submitted through January 28, 1994.

(See Calendar of Events section for additional information)

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. Section 9-6.14:7.1 of the Administrative Process Act (APA) provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Purpose: The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations. The permanent regulations will remove certain administrative impediments to the effective and efficient implementation of mental retardation waiver services in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. They will also allow persons having conditions related to mental retardation to be served by providers under contract with the Department of Rehabilitative Services (DRS).

Substance: The parts of the State Plan for Medical Assistance affected by this action are: Amount, Duration, and Scope of Services (Supplement 1 to Attachment 3.1 A&B), Case Management Services (Supplement 2 to Attachment 3.1-A). The state-only regulations affected by this action are: Home and Community Based Care Services for Individuals with Mental Retardation (VR 460-04-8.12) and Community Mental Health Services, Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The 1990 Appropriations Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for community mental health and mental retardation services in the Commonwealth. Final regulations were promulgated in 1992 which provided coverage for numerous Medicaid services for persons with mental retardation and mental illness through State Plan services and waiver services. The Secretary of Health and Human Resources has directed agencies to simplify procedures and reduce paperwork to more efficiently and effectively administer services to recipients. Staff at both agencies, working with the MR Executive Workgroup comprised of providers, local community service boards, and consumer representatives identified areas which have

caused problems in the administration of services to persons with mental retardation and mental illness.

Currently, there are approximately 105 persons residing in nursing facilities who have been determined, through the Annual Resident Review (ARR) to require specialized services. These persons may elect to remain in the nursing facility and receive habilitative services or they may elect to leave the nursing facility and receive services through the home and community-based waiver for persons with mental retardation. Previous regulations governing community mental retardation services restricted Medicaid reimbursement of providers of these services to those licensed by DMHMRSAS. Previous regulations governing the MR waiver services already included DRS habilitative providers as qualified to provide MR waiver services, but not to treat recipients of community mental retardation services.

The emergency regulations broadened the provider qualifications for persons with related conditions to include those providers contracted by DRS as habilitative services providers. The emergency regulations did not affect the amount or scope of services an individual may receive, did not affect the state's approved waiver for community services to persons with mental retardation, and did not impact on the quality of services being provided to the population. The key provisions of this proposed regulatory action are described below.

The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact (between the patient and the provider) every 90 days, regardless of the case management service being offered, and clarify the frequency as once every 90 days rather than once within a 90-day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of day health and rehabilitation services have been removed since there is no differentiation in rate or allowed amount of the service based on the difference in level. Additionally, changes are made to revise the existing definition of developmental disability and to rename the definition "related conditions" to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87. The prior authorization requirement for case management for this group is also being removed.

Another change clarifies coverage of day health and rehabilitation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to be qualified for Medicaid reimbursement for day health and rehabilitation services. Reference to two waivers and

use of the Inventory for Client and Agency Planning (ICAP) have been removed because the Commonwealth is consolidating the two waivers into one waiver for renewal in 1993. The Commonwealth is also revising the assessment and will discontinue using the ICAP as the required assessment for MR waiver services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to respond to concerns expressed in this area.

These proposed regulations broaden the range of services which may be offered to individuals in the MR waiver by adding five new services: personal assistance, assistive technology, environmental modifications, respite care, and nursing services. Prevocational services, previously included in habilitation services has now been included under the service titled day support. Supported employment services, which were also included in the definition of habilitation, has been designated as a separate service. The designation of habilitation services has thus been deleted. The definitions of the services and provider qualifications have been developed in conjunction with the MR Executive Workgroup comprised of providers, local community services boards, and consumer representatives and are a continuation of the effort initiated in the emergency regulations to remove impediments to the effective and efficient administration of services to persons with mental retardation.

Issues: As indicated above, the Secretary directed this agency to work with affected agencies and groups to simplify procedures and paperwork to more efficiently deliver services. These proposed regulations are a result of that work. Therefore, the agency foresees no negative impact on the regulated public, itself or the Commonwealth.

Impact: While these regulations add five cheaper substitute services to the MR waiver program, the cost savings will be offset by increased utilization. How many more recipients will be served cannot be determined. The increased utilization is limited by the current allocated general funds. Thus, no budget impact from the proposed regulations is expected.

Summary:

The proposed amendments remove certain administrative impediments to the effective and efficient implementation of mental retardation waiver services in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. The amendments also allow persons having conditions related to mental retardation to be served by providers under contract with the Department of Rehabilitative Services (DRS).

The key provisions of this proposed regulatory action are described below:

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The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact (between the patient and the provider) every 90 days regardless of the case management service being offered, and clarify the frequency as once every 90 days rather than once within a 90-day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of day health and rehabilitation services have been removed since there is no differentiation in rate or allowed amount of the service based on the difference in level. Additionally, changes are made to revise the existing definition of developmental disability and to rename the definition "related conditions" to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87. The prior authorization requirement for case management for this group is also being removed.

Another change clarifies coverage of day health and rehabilitation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to be qualified for Medicaid reimbursement for day health and rehabilitation services. Reference to two waivers and use of the Inventory for Client and Agency Planning (ICAP) have been removed because the Commonwealth is consolidating the two waivers into one waiver for renewal in 1993. The Commonwealth is also revising the assessment and will discontinue using the ICAP as the required assessment for MR waiver services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to respond to concerns expressed in this area.

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comprised of providers, local community services boards, and consumer representatives and are a continuation of the effort initiated in the emergency regulations to remove impediments to the effective and efficient administration of services to persons with mental retardation.

VR 460-03-3.1100. Amount, Duration and Scope of Services.

General.

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician.

§ 1. Inpatient hospital services other than those provided in an institution for mental diseases.

A. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 15 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. Medicaid does not pay the medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F of this section.)

C. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional preoperative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or

Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

F. Coverage of inpatient hospitalization will be limited to a total of 21 days for all admissions within a fixed period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission. There may be multiple admissions during this 60-day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days within 60 days with a different diagnosis and medical justification will be paid. Any claim which has the same or similar diagnosis will be denied.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

G. Repealed.

H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services

are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

- 2a. Outpatient hospital services.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

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1. Are furnished to outpatients;
2. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and
3. Are furnished by an institution that:
 - a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and
 - b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

C. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

The same service limitations apply to rural health clinics as to all other services.

2c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

The same service limitations apply to FQHCs as to all other services.

§ 3. Other laboratory and x-ray services.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

§ 4. Skilled nursing facility services, EPSDT and family planning.

4a. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

A. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

B. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

C. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

D. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in the Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

4c. Family planning services and supplies for individuals of child-bearing age.

A. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

B. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

§ 5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program

prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period. These limitations also apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and is further restricted to medically necessary inpatient hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days determined to be medically unjustified will be adjusted.

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

J. Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements

of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period.

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Coverage of transplant services for all eligible persons is limited to transplants for kidneys and corneas. Kidney transplants require preauthorization. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. The amount of reimbursement for covered kidney transplant services is negotiable with the providers on an individual case basis. Reimbursement for covered cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

§ 6. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services.

Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board

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of Medicine and psychologists clinical licensed by the Board of Psychology. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

§ 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When

determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs).

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

4. For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachments 3.1 A and B.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

§ 8. Private duty nursing services.

Not provided.

§ 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 dentist.

§ 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations;

required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

§ 11. Physical therapy and related services.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

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B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified

by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a

speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;
2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;
3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;
4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and

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speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

12a. Prescribed drugs.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

B. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

C. Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

E. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

F. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance

Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

b. In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and

meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

c. In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

4. Prior authorization of prescription drug products, coverage.

a. The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

b. Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

c. In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

d. The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

e. Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

5. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in

performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission is not done or made in bad faith or with malicious intent.

6. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

12b. Dentures.

Provided only as a result of EPSDT and subject to medical necessity and preauthorization requirements specified under Dental Services.

12c. Prosthetic devices.

A. Prosthetics services shall mean the replacement of missing arms and legs. Nothing in this regulation shall be construed to refer to orthotic services or devices.

B. Prosthetic devices (artificial arms and legs, and their necessary supportive attachments) are provided when prescribed by a physician or other licensed practitioner of the healing arts within the scope of their professional licenses as defined by state law. This service, when provided by an authorized vendor, must be medically necessary, and preauthorized for the minimum applicable component necessary for the activities of daily living.

12d. Eyeglasses.

Eyeglasses shall be reimbursed for all recipients younger than 21 years of age according to medical necessity when provided by practitioners as licensed under the Code of Virginia.

§ 13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

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1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

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

“Code” means the Code of Virginia.

“DMAS” means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

“DMHMRSAS” means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the

residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to ~~260 days~~ 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to ~~260 days~~ 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to ~~312 days~~ 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days

per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit or both, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

a. Day health and rehabilitation services (limited to 500 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

- (1) Self-care and hygiene skills;
- (2) Eating and toilet training skills;
- (3) Task learning skills;
- (4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);
- (5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);
- (6) Medication management;
- (7) Travel and related training to and from the

training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. There shall be two levels of day health and rehabilitation services: Level I and Level II.

(1) Level I services shall be provided to individuals who meet the basic program eligibility requirements.

(2) Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present:

(a) The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention);

(b) The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

(c) The individual requires extensive personal care or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

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15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.
2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.
3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.
4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

5. All services shall be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

- a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.
- b. Medical social services. Medical social services shall be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.
- c. Physician services. Physician services shall be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life

expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Transportation services are provided to Virginia

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Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens.

A. No payment shall be made for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law unless such services are necessary for the treatment of an emergency medical condition of the alien.

B. Emergency services are defined as:

Emergency treatment of accidental injury or medical condition (including emergency labor and delivery) manifested by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical/surgical attention could reasonably be expected to result in:

1. Placing the patient's health in serious jeopardy;
2. Serious impairment of bodily functions; or
3. Serious dysfunction of any bodily organ or part.

C. Medicaid eligibility and reimbursement is conditional upon review of necessary documentation supporting the need for emergency services. Services and inpatient lengths of stay cannot exceed the limits established for other Medicaid recipients.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-03-3.1102. Case Management Services.

§ 1. High risk pregnant women and children.

A. Target group.

To reimburse case management services for high-risk Medicaid eligible pregnant women and children up to age two.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

The case management services will provide maternal and child health coordination to minimize fragmentation of care, reduce barriers, and link clients with appropriate services to ensure comprehensive, continuous health care. The Maternity Care Coordinator will provide:

1. Assessment. Determining clients' service needs, which include psychosocial, nutrition, medical, and educational factors.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress and ensuring services are delivered.
5. Education and counseling. Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Any duly enrolled provider which the department determines is qualified who has signed an agreement with Department of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness can be obtained.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group.

The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, significant others, service providers, and others including a ~~minimum~~ of at least one face-to-face contact ~~within a 90-day period every 90 days~~. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur.
2. There shall be no maximum service limits for case

management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the individualized service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;
6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;
7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

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8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet certain criteria. These criteria shall be:

- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
- b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
- c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
- d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
- e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
- f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

- (1) The nature of serious mental illness in adults and serious emotional disturbance in children and

adolescents;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments, including functional assessment, and their uses in service planning;

(4) Consumers' rights;

(5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

(6) Types of mental health programs and services;

(7) Effective oral, written and interpersonal communication; principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Observing, recording and reporting on an individual's functioning;

(3) Identifying and documenting a consumer's needs for resources, services and other supports;

(4) Using information from assessments, evaluations, observation and interviews to develop service plans;

(5) Identifying services within the community and established service system to meet the individual's needs;

(6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances ;

(7) Negotiating with consumers and service providers;

(8) Coordinating the provision of services by diverse public; and private providers;

(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group.

Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a ~~minimum of~~ *at least* one face-to-face contact ~~within a 90-day period every 90 days~~. Billing can be submitted *for an active client* only for months

in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischARGE periods in 12 months.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;

2. Linking the individual directly to services and supports specified in the treatment/services plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;

6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment or community adjustment;

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7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

2. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention,

discharge planning and service coordination;

(3) Different types of assessments, including functional assessment, and their uses in service planning;

(4) Consumer's rights;

(5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

(6) Types of mental health programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Observing, recording and reporting on an individual's functioning;

(3) Identifying and documenting a consumer's needs for resources, services and other supports;

(4) Using information from assessments, evaluations, observation and interviews to develop service plans;

(5) Identifying services within the community and established service system to meet the individual's needs;

(6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances;

(7) Negotiating with consumers and service providers;

(8) Coordinating the provision of services by diverse public and private providers;

(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);
- (2) Be persistent and remain objective;
- (3) Work as a team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing position duties under general supervision;
- (5) Communicate effectively, verbally and in writing; and
- (6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 4. Individuals with mental retardation.

A. Target group.

Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a ~~minimum of~~ *at least one face-to-face contact within a 90-day period every 90 days*. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur.
2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement

for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals *may* be billed for no more than two predischARGE periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation services to be provided include:

1. Assessment and planning services, to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the consumer service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;
6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Proposed Regulations

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive

counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning;

(4) Consumers' rights;

(5) Local community resources and service delivery systems, including support services, eligibility criteria and intake process, termination criteria and procedures and generic community resources;

(6) Types of mental retardation programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Negotiating with consumers and service providers;

(3) Observing, recording and reporting behaviors;

(4) Identifying and documenting a consumer's needs for resources, services and other assistance;

(5) Identifying services within the established service system to meet the consumer's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Using information from assessments, evaluations, observation and interviews to develop service plans;

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation; and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental retardation, respecting consumers' and families' privacy, believing consumers can grow);

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- (2) Be persistent and remain objective;
- (3) Work as team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing position duties under general supervision;
- (5) Communicate effectively, verbally and in writing; and
- (6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 5. Individuals with mental retardation and related conditions who are participants in the home and community-based care waivers for persons with mental retardation and related conditions.

A. Target group.

Medicaid eligible individuals with mental retardation and related conditions, or a child under six years of age who is at developmental risk, who have been determined to be eligible for home and community based care waiver services for persons with mental retardation and related conditions.

1. An active client for waiver case management shall mean an individual who receives a ~~minimum~~ of at least one face-to-face contact every ~~two months~~ 90 days and monthly on-going case management interactions. There shall be no maximum service limits for case management services. Case management services ~~must be preauthorized by DMAS after review and recommendation by the care coordinator employed by DMHMRSAS and verification of waiver eligibility may be initiated up to three months prior to the start of waiver services, unless the individual is institutionalized~~.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement

for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two pre-discharge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire State
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation case management services to be provided include:

1. Assessment and planning services to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the consumer service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;
6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guide the client and develop a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Proposed Regulations

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the community services boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities at the entry level. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation,

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination,

(3) Different types of assessments and their uses in program planning,

(4) Consumers' rights,

(5) Local service delivery systems, including support services,

(6) Types of mental retardation programs and services.

(7) Effective oral, written and interpersonal communication principles and techniques,

(8) General principles of record documentation, and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing,

(2) Negotiating with consumers and service providers,

(3) Observing, recording and reporting behaviors,

(4) Identifying and documenting a consumer's needs for resources, services and other assistance,

(5) Identifying services within the established service system to meet the consumer's needs,

(6) Coordinating the provision of services by diverse public and private providers,

(7) Analyzing and planning for the service needs of mentally retarded persons,

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation, and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g., treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow),

(2) Be persistent and remain objective,

(3) Work as team member, maintaining effective interagency and intraagency working relationships,

(4) Work independently, performing position duties under general supervision,

(5) Communicate effectively, verbally and in writing, and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 6. Case management for the elderly.

A. Target group.

Persons age 60 and over who have been screened through a Case Management Pilot Project approved by the Long-Term Care Council and found to be dependent in two or more of the following activities of daily living: (i) bathing, (ii) dressing, (iii) toileting, (iv) transferring, (v) continence, or (vi) eating.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of § 1915(g)(1)) of the Act is invoked to provide services less than statewide:

a. Fairfax County and the cities of Falls Church and Fairfax;

b. Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22.

C. Comparability of services.

Services are provided in accordance with § 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

1. Assessment. Determining client's service needs, which include psychosocial, nutritional and medical.

2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.

3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.

4. Follow-up and monitoring. Assessing ongoing progress, ensuring services are delivered, and periodically reassessing need to determine appropriate revisions to the case management plan of care.

E. Qualifications of providers.

To qualify as a provider of case management for the elderly, the provider of services must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The case manager must have these knowledge, skills, and abilities at the entry level which must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

1. Knowledge of:

a. Aging and the impact of disabilities and illnesses on aging;

b. Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;

c. Interviewing techniques;

d. Consumers' rights;

e. Local human and health service delivery systems, including support services and public benefits eligibility requirements;

f. The principles of human behavior and interpersonal relationships;

g. Effective oral, written, and interpersonal communication principles and techniques;

h. General principles of record documentation;

i. Service planning process and the major components of a service plan.

2. Skills in:

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- a. Negotiating with consumers and service providers;
- b. Observing, recording and reporting behaviors;
- c. Identifying and documenting a consumer's needs for resources, services and other assistance;
- d. Identifying services within the established services system to meet the consumer's needs;
- e. Coordinating the provision of services by diverse public and private providers;
- f. Analyzing and planning for the service needs of elderly persons.

3. Abilities to:

- a. Demonstrate a positive regard for consumers and their families;
- b. Be persistent and remain objective;
- c. Work as a team member, maintaining effective inter- and intra-agency working relationships;
- d. Work independently, performing position duties under general supervision;
- e. Communicate effectively, verbally and in writing.
- f. Develop a rapport and to communicate with different types of persons from diverse cultural backgrounds;
- g. Interview.

4. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field or be a licensed nurse. In addition, it is preferable that the case manager have two years of satisfactory experience in the human services field working with the elderly.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services to the elderly shall be limited to no more than four months without authorization from the Department of Medical Assistance Services.

VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation.

§ 1. Definitions.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to communicate with the environment in which they live or which are necessary to the proper functioning of such items.

"Care coordinators" means persons community resource consultants employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"Case management" means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

"Case managers" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Community based care waiver services" or "waiver services" means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in a nursing facility for the mentally retarded.

"Community services board" or "CSB" means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

"Consumer Service Plan" or "CSP" means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by

service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

"DMAS" means the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, and transportation to and from training sites, services and support activities, and prevocational services aimed at preparing an individual for paid or unpaid employment.

"Developmental disability" means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that individual attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and (v) results in the individual's need for special care, treatment or services that are individually planned and coordinated, and that are of lifelong or extended duration.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

"Environmental modifications" means physical adaptations to a house, place of residence or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for

Medicaid-eligible children.

"Habituation" means prevocational and supported employment for mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded, aimed at preparing an individual for paid or unpaid employment.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Inventory for client and agency planning" or "ICAP" means the assessment instrument used by case managers and care coordinators to record the mentally retarded individual's needs and document that the individual meets the ICF/MR level of care.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Nursing services" means skilled nursing services listed in the plan of care which are ordered by a physician and required to prevent institutionalization, not available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in the state.

"Personal assistance" means assistance with activities of daily living, medication or other medical needs and monitoring health status and physical condition for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

"Related conditions" means those conditions defined in 42 CFR 435-1009 as severe, chronic disabilities attributable to cerebral palsy or epilepsy or other conditions found to be closely related to mental retardation due to the impairment of general intellectual functioning or adaptive

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behavior similar to that of persons with mental retardation, which requires treatment or services similar to those required for these persons. A related condition must manifest itself before the person reaches age 22; be likely to continue indefinitely and result in substantial functional limitations in three or more areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent living, as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Residential support services" means support provided in the mentally retarded individual's home or in a licensed residence which includes training, assistance, and supervision in enabling the individual to maintain or improve his health, assistance in performing individual care tasks, training in activities of daily living, training and use of community resources, and adapting behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room and board.

"Respite care" means services given to individuals unable to care for themselves provided on a short-term basis because of the absence or need for relief of those persons normally providing the care.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

"State Plan for Medical Assistance" or "Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally

retarded.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

§ 2. General coverage and requirements for home and community-based care services.

A. Waiver service populations.

Home and community-based services shall be available through two a § 1915(c) waiver services programs. The services, eligibility determination, authorization process and provider requirements set forth in these regulations apply equally to both waiver programs. DMAS shall assign individuals to a waiver program based on the individual's diagnosis or condition .

1. Coverage shall be provided under a the waiver program specifically for the following individuals currently residing in nursing facilities who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

- a. 1. Individuals with mental retardation.
- b. 2. Individuals with related conditions currently residing in nursing facilities and determined to require specialized services .

2. Coverage shall be provided under a separate waiver program for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

- a. Individuals with mental retardation.
- b. 3. Individuals under the age of six at developmental risk who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. At age six, these individuals must be determined to be mentally retarded to continue to receive home and community-based care services.

B. Covered services.

1. Covered services shall include: residential support, habilitation, day support , supported employment, personal assistance, respite care, assistive technology, environmental modifications, nursing services and therapeutic consultation.

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita

expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

3. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after deducting the following amounts in the following order from the individual's income:

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902(a)(10)(B) to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act, the same as that applied for the institutionalized patient.

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

D. Assessment and authorization of home and community-based care services.

1. The individual's need for home and community-based care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the ~~Inventory for Client and Agency Planning (ICAP) assessment~~, determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the

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Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (VR 460-04-8.2).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be *current*, completed *prior to the individual's entry to the waiver*, no earlier than ~~60~~ *days 12 months* prior to beginning waiver services. Social assessments must have been completed within one year of beginning waiver services. Psychological evaluations or reviews must be completed within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that precedes admission to waiver services by more than three years.

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid, or exit from nursing facility placement.

5. Community-based care waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, has a related condition, *and is currently residing in a nursing facility and been determined to require specialized services*, or is a child under the age of six at developmental risk who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the care coordinator for final determination of ICF/MR level of care and authorization for

community-based care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

§ 3. General conditions and requirements for all home and community-based care participating providers.

A. General requirements.

Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change in the information which the provider previously submitted to DMAS.

2. Assure freedom of choice to recipients in seeking medical care from any institution, pharmacy, practitioner, or other provider qualified to perform the services required and participating in the Medicaid Program at the time the service was performed.

3. Assure the recipient's freedom to refuse medical care and treatment.

4. Accept referrals for services only when staff is available to initiate services.

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.

6. Provide services and supplies to recipients in the same quality and mode of delivery as provided to the general public.

7. Charge DMAS for the provision of services and supplies to recipients in amounts not to exceed the provider's usual and customary charges to the general public.

8. Accept Medicaid payment from the first day of the recipient's eligibility.

9. Accept as payment in full the amount established by DMAS.

10. Use program-designated billing forms for submission of charges.

11. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided.

a. Such records shall be retained for at least five years from the last date of service or as provided by applicable state laws, whichever period is longer. If an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for at least five years after such minor has reached the age of 18 years.

b. Policies regarding retention of records shall apply even if the agency discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth of Virginia.

12. Furnish to authorized state and federal personnel, in the form and manner requested, access to records and facilities.

13. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid.

14. Hold confidential and use for authorized DMAS or DMHMRSAS purposes only all medical assistance information regarding recipients.

15. When ownership of the provider agency changes, DMAS shall be notified within 15 calendar days of such change.

B. Requests for participation.

DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.

C. Provider participation standards.

For DMAS to approve contracts with home and community-based care providers the following standards shall be met:

1. The provider must have the ability to serve all individuals in need of waiver services regardless of the individual's ability to pay or eligibility for

Medicaid reimbursement.

2. The provider must have the administrative and financial management capacity to meet state and federal requirements.

3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.

4. The provider of residential and day support services must meet the licensing requirements of DMHMRSAS that address standards for personnel, residential and day program environments, and program and service content. Residential support services may also be provided in programs licensed by DSS (homes for adults) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered by employees of the CSB according to DMHMRSAS policies.

5. ~~Habilitation~~ *Supported employment or prevocational training* services shall be provided by agencies that are either licensed by DMHMRSAS or are vendors of prevocational, vocational or supported employment services for DRS.

6. Services provided by members of professional disciplines shall meet all applicable state licensure *or certification* requirements. Persons providing consultation in behavioral analysis shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities. *Persons providing rehabilitation engineering shall be contracted with DRS.*

7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR Part 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, VR 470-02-08, VR 470-02-10 and VR 470-02-11 or through DSS licensure standards VR 615-22-05 and VR 615-50-1.

8. *Personal assistance services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider or, for individuals with related conditions who are capable of directing this service, the provider may be an individual registered with DRS.*

9. *Respite care services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider, approved by DSS as a foster care home for children or adult foster home or*

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be registered with the CSB as an individual provider of respite care.

10. Nursing services shall be provided by a DMAS certified private duty nursing or home health provider or by a licensed registered nurse or practical nurse contracted or employed by the CSB.

11. Environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors of the CSB or DRS who shall be reimbursed for the amount charged by said contractors.

12. Assistive technology shall be provided by agencies under contract with DMAS as a durable medical equipment and supply provider.

D. Adherence to provider contract and DMAS provider service manual.

In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall adhere to the conditions of participation outlined in their individual provider contracts and in the DMAS provider service manual.

E. Recipient choice of provider agencies.

If there is more than one approved provider agency in the community, The waiver recipient shall be informed of all available providers in the community and shall have the option of selecting the provider agency of his choice from among those agencies which can appropriately meet the individual's needs .

F. Termination of provider participation.

DMAS may administratively terminate a provider from participation upon 60 days' written notification. DMAS may also cancel a contract immediately or may give such notification in the event of a breach of the contract by the provider as specified in the DMAS contract. Such action precludes further payment by DMAS for services provided recipients subsequent to the date specified in the termination notice.

G. Reconsideration of adverse actions.

Adverse actions may include, but are not limited to, disallowed payment of claims for services rendered which are not in accordance with DMAS policies and procedures, contract limitation or termination. The following procedures shall be available to all providers when DMAS takes adverse action which includes termination or suspension of the provider agreement.

1. The reconsideration process shall consist of three phases:

a. A written response and reconsideration of the

preliminary findings.

b. The informal conference.

c. The formal evidentiary hearing.

2. The provider shall have 30 days to submit information for written reconsideration, 15 days from the date of the notice to request the informal conference, and 15 days from the date of the notice to request the formal evidentiary hearing.

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information.

It shall be the responsibility of the case management provider to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are implemented.

2. A recipient dies.

3. A recipient is discharged or terminated from services.

4. Any other circumstances (including hospitalization) which cause home and community-based care services to cease or be interrupted for more than 30 days.

I. Changes or termination of care.

It is the care coordinator's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.

2. The case manager will review the need for a change and may recommend a change to the plan of care to the care coordinator.

3. The care coordinator will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 72 hours of receipt of the request for change.

4. The case manager will communicate in writing the

authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals Regulations (VR 460-04-8.7).

5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient or family and case manager 10 days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and care coordinator must be notified prior to termination. The 10-day written notification period shall not be required.

7. Termination of home and community-based care services for a recipient by the care coordinator. The effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The care coordinator has the authority to terminate home and community-based care services.

J. Suspected abuse or neglect.

Pursuant to § 63.1-55.3 of the Code of Virginia, if a participating provider agency knows or suspects that a home and community-based care recipient is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse/neglect/exploitation shall report this to the local DSS.

K. DMAS monitoring.

DMAS is responsible for assuring continued adherence to provider participation standards. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies and periodically recertify each provider for contract renewal with DMAS to provide home and community-based services. A provider's noncompliance with DMAS policies and procedures, as required in the provider's contract, may result in a written request from DMAS for a corrective action plan which details the steps the provider will take and the length of time required to achieve full compliance with deficiencies which have been cited.

§ 4. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home or in a licensed residence in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence. Service providers are reimbursed only for the amount and type of residential support services included in the individual's approved plan of care based on an hourly fee for service. Residential support services shall not be authorized in the plan of care unless the individual requires these services and they exceed the care included in the individual's room and board arrangement.

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. *If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage.* Service providers are reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on a daily fee for service established according to the setting, intensity and duration of the service to be delivered.

C. ~~Habilitation~~ *Supported employment* services shall include *training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded prevocational and supported employment services for former institutional residents.* Each plan of care must contain documentation regarding whether ~~prevocational or~~ supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service delivered. *Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the individual is in the supported employment environment.*

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical

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therapy, *therapeutic recreation, rehabilitation engineering* and speech therapy. Behavioral analysis performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, *other than behavioral analysis*, may be provided in residential or day support settings or in office settings *in conjunction with another waiver service. Behavioral analysis may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization.* Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service.

E. Environmental modifications shall be available to individuals who are receiving at least one other waiver service. It is provided primarily in the individual's home or other community residence in accordance with all applicable state or local building codes. A maximum limit of \$5,000 may be reimbursed in a year.

F. Personal assistance is available only for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

G. Respite care services are limited to a maximum of 30 days or 720 hours per year.

H. Nursing services are for individuals with serious medical conditions and complex health care needs which require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing is provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. The plan of care must indicate that the service is necessary to prevent institutionalization and is not available under the State Plan for Medical Assistance.

I. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed in a year.

§ 5. Reevaluation of service need and utilization review.

A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the recipient, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to recipients, the frequency of services, the type of service provider,

and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

The case manager is responsible for continuous monitoring of the appropriateness of the recipient's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The care coordinator shall review the plan of care every six months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by the care coordinator, another employee of DMHMRSAS or DMAS.

B. Review of level of care.

1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to assure proper utilization of services.

2. The case manager shall coordinate a comprehensive reassessment, including, *if indicated*, a medical examination and a psychological evaluation ~~or review~~, for every waiver recipient at least once a year. This reassessment shall include an update of the ICAP ~~assessment instrument~~ ~~or other appropriate instrument for children under six years of age~~, and any other appropriate assessment data based on the recipient's characteristics.

3. *A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or care coordinator. Medical examinations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.*

4. *A new psychological evaluation is required every three years.*

C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ICAP ~~and other~~ assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.

b. All ISP's from any provider rendering waiver

services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.

b. An attendance log which documents the date services were rendered and the amount and type of service rendered.

c. Appropriate progress notes reflecting recipient's *status and, as appropriate, progress toward the goals on the ISP.*

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

§ 1. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the client of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the client's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services

consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"Developmental disability" means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means that which is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable

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to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

§ 2. Mental health services.

The following services shall be covered: intensive in-home services, therapeutic day treatment for children and adolescents, day treatment/partial hospitalization, psychosocial rehabilitation, and crisis intervention. These covered services are further defined below:

A. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).
3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are

required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.

6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

B. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to ~~260 days~~ *780 units*, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills, and individual, group and family counseling. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.
3. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e., before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day, and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.
4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

C. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to ~~260 days~~ *780 units*, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to ~~312 days~~ *936 units*, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, or education within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. A unit of service is defined as a minimum of two but less than four hours on a given day. Two units of service are defined as at least four but less than seven hours in a given day. Three units are defined as seven or more hours in a given day. Transportation time to and from

the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Time allocated for field trips may be used to calculate time and units of service if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to

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eligible individuals outside of the clinic and billed provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services such time is reimbursable. Crisis intervention may involve the family or significant others.

§ 3. Mental retardation /related conditions services.

Day health and rehabilitation services shall be covered for persons with mental retardation or related conditions and the following definitions shall apply:

A. Day health and rehabilitation services (limited to ~~500~~ 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

1. Self-care and hygiene skills: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;
2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;
3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;
4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;
5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;
6. Environmental skills: training in punctuality, self-discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;

7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;

8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;

9. Travel and related training to and from the training sites and service and support activities;

10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.

11. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

B. There shall be two levels of Day Health and Rehabilitation services: Level I and Level II.

1. Level I services shall be provided to individuals who meet the basic program eligibility requirements.

2. Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present:

a. The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention);

b. The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

c. The individual requires extensive personal care and/or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

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§ 4. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

a. Mental health.

- (1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.
- (2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.
- (3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.
- (4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.
- (5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program
- (6) Case Management: certified by DMHMRSAS

b. Mental retardation.

- (1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program
- (2) Case Management: Certified by DMHMRSAS

c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation

services providers.

§ 5. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

§ 6. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

V.A.R. Doc. No. R94-244; Filed November 10, 1993, 10:45 a.m.

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Title of Regulation: State Plan for Medical Assistance Relating to Case Management for the Elderly. VR 460-03-3.1102. Case Management Services (Supplement 2 to Attachment 3.1-A).

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

Public Hearing Date: N/A – Written comments may be submitted through January 28, 1994.

(See Calendar of Events section for additional information)

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. Section 9-6.14:9 of the Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

Section 1915(g) of the Social Security Act gives states the authority to cover case management services and to target them to specific groups of Medicaid eligible individuals. The 1991 Appropriations Act directed the Secretary of Health and Human Resources to develop policy and implementation guidelines for a statewide system of case management for elderly Virginians. The secretary was further directed to initiate this effort in a pilot program. During 1991, regulations were adopted under the authority of Title XIX of the Social Security Act to cover case management for individuals eligible to participate in the pilot program in order to obtain federal matching funds for the pilot program.

Purpose: The purpose of this proposal is to bring administrative utilization control requirements of the State Plan for Medical Assistance into conformity with

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requirements for the timing of client reassessments required by the Long-Term Care Council for the Case Management Pilot Programs.

Substance: The State Plan for Medical Assistance limits case management services for the elderly to no more than four months without preauthorization. At the point when the case manager identifies that a Medicaid eligible client will require more than four months of case management services, the case manager must request an extension of case management services from the department. The request must include an updated assessment of the client's needs and an indication of the reasons and extent of additional services.

The policy of the Long-Term Care Council requires that the case manager reassess the client's plan of care every six months. This disparity between the Medicaid requirements and those of the Long-Term Care Council is creating confusion and some extra work for the pilot programs. The Case Management Work Group, a group of professionals representing the Long-Term Care Council, and the pilot project staff have requested the Department of Medical Assistance to change the Medicaid requirement for reauthorization to a schedule of six months rather than four in order to bring the two policies into conformity. Such a change will not reduce the quality of care to the clients and should reduce unnecessary paper work. This regulatory change will implement the requested modification in Medicaid regulations.

Issues: Since the purpose of this proposed regulation is to eliminate potential barriers to services, the agency sees no negative issues involved in implementing this proposed change.

Impact: During FY 93, 743 Medicaid eligible individuals received case management services through the pilot program for a total expenditure of \$315,062 (\$157,531 GF; \$157,531 NGF). Requests for extension beyond the initial four months of service were received on approximately 25% of those recipients. Most requests for extension were approved. A probable increase in utilization as a result of this regulation is expected to be within the limits of the current funding provided specifically for this project. However, it is anticipated that some savings in administrative costs to the pilot agencies which is paid through the state-funded grant from the Long-Term Care Council will result from the reduction in paperwork and duplicative work of requesting extensions on a separate time schedule from the required reassessments.

Summary:

The proposed amendment brings administrative utilization control requirements of the State Plan for Medical Assistance into conformity with requirements for the timing of client reassessments required by the Long-Term Care Council for the Case Management Pilot Programs.

The State Plan for Medical Assistance limits case management services for the elderly to no more than four months without preauthorization. At the point when the case manager identifies that a Medicaid eligible client will require more than four months of case management services, the case manager must request an extension of case management services from the department. The request must include an updated assessment of the client's needs and an indication of the reasons and extent of additional services.

The policy of the Long-Term Care Council requires that the case manager reassess the client's plan of care every six months. This disparity between the Medicaid requirements and those of the Long-Term Care Council is creating confusion and some extra work for the pilot programs. The Case Management Work Group, a group of professionals representing the Long-Term Care Council, and the pilot project staff have requested the Department of Medical Assistance to change the Medicaid requirement for reauthorization to a schedule of six months rather than four in order to bring the two policies into conformity. Such a change will not reduce the quality of care to the clients and should reduce unnecessary paper work. This regulatory change will implement the requested modification in Medicaid regulations.

During FY 93, 743 Medicaid eligible individuals received case management services through the pilot program. Requests for extension beyond the initial four months of service were received on approximately 25% of those recipients. Most requests for extension were approved. A probable increase in utilization as a result of this regulation is expected to be within the limits of the current funding provided specifically for this project. However, it is anticipated that some savings in administrative costs to the pilot agencies which is paid through the state-funded grant from the Long-Term Care Council will result from the reduction in paperwork and duplicative work of requesting extensions on a separate time schedule from the required reassessments.

VR 460-03-3.1102. Case Management Services.

§ 1. High risk pregnant women and children.

A. Target group.

To reimburse case management services for high-risk Medicaid eligible pregnant women and children up to age two.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services

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less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

The case management services will provide maternal and child health coordination to minimize fragmentation of care, reduce barriers, and link clients with appropriate services to ensure comprehensive, continuous health care. The Maternity Care Coordinator will provide:

1. Assessment. Determining clients' service needs, which include psychosocial, nutrition, medical, and educational factors.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress and ensuring services are delivered.
5. Education and counseling. Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Any duly enrolled provider which the department determines is qualified who has signed an agreement with Department of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness

can be obtained.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group.

The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, significant others, service providers, and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and

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scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the individualized service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;
6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;
7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet certain criteria. These criteria shall be:

- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
- b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
- c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
- d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
- e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
- f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

- (1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;
- (2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;
- (3) Different types of assessments, including functional assessment, and their uses in service planning;
- (4) Consumers' rights;
- (5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g.

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churches, clubs, self-help groups);

- (6) Types of mental health programs and services;
- (7) Effective oral, written and interpersonal communication; principles and techniques;
- (8) General principles of record documentation; and
- (9) The service planning process and major components of a service plan.

b. Skills in:

- (1) Interviewing;
- (2) Observing, recording and reporting on an individual's functioning;
- (3) Identifying and documenting a consumer's needs for resources, services and other supports;
- (4) Using information from assessments, evaluations, observation and interviews to develop service plans;
- (5) Identifying services within the community and established service system to meet the individual's needs;
- (6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances ;
- (7) Negotiating with consumers and service providers;
- (8) Coordinating the provision of services by diverse public; and private providers;
- (9) Identifying community resources and organizations and coordinating resources and activities; and
- (10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);
- (2) Be persistent and remain objective;
- (3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group.

Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

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Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;
2. Linking the individual directly to services and supports specified in the treatment/services plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;
6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment or community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet certain criteria. These criteria shall be:
 - a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
 - b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

2. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

- (1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;
- (2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;
- (3) Different types of assessments, including functional assessment, and their uses in service planning;
- (4) Consumer's rights;
- (5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);
- (6) Types of mental health programs and services;
- (7) Effective oral, written and interpersonal communication principles and techniques;

- (8) General principles of record documentation; and
- (9) The service planning process and major components of a service plan.

b. Skills in:

- (1) Interviewing;
- (2) Observing, recording and reporting on an individual's functioning;
- (3) Identifying and documenting a consumer's needs for resources, services and other supports;
- (4) Using information from assessments, evaluations, observation and interviews to develop service plans;
- (5) Identifying services within the community and established service system to meet the individual's needs;
- (6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances;
- (7) Negotiating with consumers and service providers;
- (8) Coordinating the provision of services by diverse public and private providers;
- (9) Identifying community resources and organizations and coordinating resources and activities; and
- (10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);
- (2) Be persistent and remain objective;
- (3) Work as a team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing position duties under general supervision;
- (5) Communicate effectively, verbally and in writing; and
- (6) Establish and maintain ongoing supportive

relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 4. Individuals with mental retardation.

A. Target group.

Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals be billed for no more than two predischarge periods in twelve months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the

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requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation services to be provided include:

1. Assessment and planning services, to include developing a consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the consumer service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;
6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.
2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:
 - a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
 - b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services

regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning;

(4) Consumers' rights;

(5) Local community resources and service delivery systems, including support services, eligibility criteria and intake process, termination criteria and procedures and generic community resources;

(6) Types of mental retardation programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Negotiating with consumers and service providers;

(3) Observing, recording and reporting behaviors;

(4) Identifying and documenting a consumer's needs for resources, services and other assistance;

(5) Identifying services within the established service system to meet the consumer's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Using information from assessments, evaluations, observation and interviews to develop service plans;

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation; and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental retardation, respecting consumers' and families' privacy, believing consumers can grow);

(2) Be persistent and remain objective;

(3) Work as team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 5. Individuals with mental retardation and related conditions who are participants in the home and community-based care waivers for persons with mental retardation and related conditions.

A. Target group.

Medicaid eligible individuals with mental retardation and related conditions, or a child under six years of age who is at developmental risk, who have been determined to be eligible for home and community based care waiver services for persons with mental retardation and related conditions. An active client for waiver case management shall mean an individual who receives a minimum of one face-to-face contact every two months and monthly on-going case management interactions. There shall be no maximum service limits for case management services. Case management services must be preauthorized by DMAS after review and recommendation by the care coordinator employed by DMHMRSAS and verification of waiver eligibility.

B. Areas of state in which services will be provided:

Entire State

Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

Services are provided in accordance with § 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation case management services to be provided include:

1. Assessment and planning services to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the consumer service plan;

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3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;

7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guide the client and develop a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the community services boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities at the entry level. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation,

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination,

(3) Different types of assessments and their uses in program planning,

(4) Consumers' rights,

(5) Local service delivery systems, including support services,

(6) Types of mental retardation programs and services.

(7) Effective oral, written and interpersonal communication principles and techniques,

(8) General principles of record documentation, and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing,

(2) Negotiating with consumers and service providers,

(3) Observing, recording and reporting behaviors,

(4) Identifying and documenting a consumer's needs for resources, services and other assistance,

(5) Identifying services within the established service system to meet the consumer's needs,

(6) Coordinating the provision of services by diverse

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public and private providers,

(7) Analyzing and planning for the service needs of mentally retarded persons,

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation, and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g., treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow),

(2) Be persistent and remain objective,

(3) Work as team member, maintaining effective interagency and intraagency working relationships,

(4) Work independently, performing position duties under general supervision,

(5) Communicate effectively, verbally and in writing, and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 6. Case management for the elderly.

A. Target group.

Persons age 60 and over who have been screened through a Case Management Pilot Project approved by the Long-Term Care Council and found to be dependent in two or more of the following activities of daily living: (i) bathing, (ii) dressing, (iii) toileting, (iv) transferring, (v) continence, or (vi) eating.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of § 1915(g)(1)) of the Act is invoked to provide services less than statewide:

a. Fairfax County and the cities of Falls Church and Fairfax;

b. Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22.

C. Comparability of services.

Services are provided in accordance with § 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

1. Assessment. Determining client's service needs, which include psychosocial, nutritional and medical.

2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.

3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.

4. Follow-up and monitoring. Assessing ongoing progress, ensuring services are delivered, and periodically reassessing need to determine appropriate revisions to the case management plan of care.

E. Qualifications of providers.

To qualify as a provider of case management for the elderly, the provider of services must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The case manager must have these knowledge, skills, and abilities at the entry level which must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

1. Knowledge of:

a. Aging and the impact of disabilities and illnesses

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- on aging;
 - b. Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;
 - c. Interviewing techniques;
 - d. Consumers' rights;
 - e. Local human and health service delivery systems, including support services and public benefits eligibility requirements;
 - f. The principles of human behavior and interpersonal relationships;
 - g. Effective oral, written, and interpersonal communication principles and techniques;
 - h. General principles of record documentation;
 - i. Service planning process and the major components of a service plan.
2. Skills in:
- a. Negotiating with consumers and service providers;
 - b. Observing, recording and reporting behaviors;
 - c. Identifying and documenting a consumer's needs for resources, services and other assistance;
 - d. Identifying services within the established services system to meet the consumer's needs;
 - e. Coordinating the provision of services by diverse public and private providers;
 - f. Analyzing and planning for the service needs of elderly persons.
3. Abilities to:
- a. Demonstrate a positive regard for consumers and their families;
 - b. Be persistent and remain objective;
 - c. Work as a team member, maintaining effective inter- and intra-agency working relationships;
 - d. Work independently, performing position duties under general supervision;
 - e. Communicate effectively, verbally and in writing.
 - f. Develop a rapport and to communicate with different types of persons from diverse cultural backgrounds;

g. Interview.

4. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field or be a licensed nurse. In addition, it is preferable that the case manager have two years of satisfactory experience in the human services field working with the elderly.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services to the elderly shall be limited to no more than ~~four~~ six months without authorization from the Department of Medical Assistance Services.

V.A.R. Doc. No. R94-217; Filed November 9, 1993, 1:52 p.m.

* * * * *

Title of Regulation: VR 460-04-8.900. Public Participation Guidelines in the Formation and Development of Regulations .

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

Public Hearing Date: N/A – Written comments may be submitted through January 28, 1994.

(See Calendar of Events section for additional information)

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. Section 9-6.14:9 of the Administrative Process Act provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the Administrative Process Act.

Purpose: The purpose of this proposal is to amend the

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agency's Public Participation Guidelines to be consistent with provisions of the Administrative Process Act which was amended effective July 1, 1993.

Substance and Issues: Effective October 1984 the Department of Medical Assistance Services (DMAS) became subject to the Administrative Process Act. Because the State Plan is a "regulation" as defined in § 9-6.14:4 F of the Code of Virginia, amendments to it must be promulgated in accordance with the Administrative Process Act.

The Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) requires the development and use of Public Participation Guidelines by executive agencies. DMAS' Public Participation Guidelines became effective November 1, 1985, and were most recently revised effective April 1991.

The 1993 General Assembly-approved House Bill 1652 made numerous changes in the Administrative Process Act which were intended to improve and increase the public's opportunities to participate in the Commonwealth's executive agencies' rule making processes. These changes in the Administrative Process Act necessitate a modification to the DMAS' Public Participation Guidelines. Specifically, § 4 A is being modified regarding methods for soliciting the input of interested parties in the development of regulations.

Impact: This regulatory action will have minimal fiscal impact. Any increases will result from additional mailing costs. The impact on the public will be improved and increased opportunities to participate in the agency's rule making process.

Summary:

This proposal amends the agency's Public Participation Guidelines to be consistent with provisions of the Administrative Process Act which was amended effective July 1, 1993.

Effective October 1984 the Department of Medical Assistance Services (DMAS) became subject to the Administrative Process Act. Because the State Plan is a "regulation" as defined in § 9-6.14:4 F of the Code of Virginia, amendments to it must be promulgated in accordance with the Administrative Process Act.

The Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) requires the development and use of Public Participation Guidelines by executive agencies. DMAS' Public Participation Guidelines became effective November 1, 1985, and were most recently revised effective April 1991.

The 1993 General Assembly-approved House Bill 1652 made numerous changes in the Administrative Process Act which were intended to improve and increase the public's opportunities to participate in the

Commonwealth's executive agencies' rule making processes. These changes in the Administrative Process Act necessitate a modification to the DMAS' Public Participation Guidelines. Specifically, § 4 A is being modified regarding methods for soliciting the input of interested parties in the development of regulations.

VR 460-04-8.900. Public Participation Guidelines.

§ 1. Definitions.

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

"Board" means the Board of Medical Assistance Services.

"Director" means the Director of the Department of Medical Assistance Services.

"Department" or "DMAS" means the Department of Medical Assistance Services.

"Formation and development process" means those activities with respect to a specific regulation which occur between the publication of a notice of intent to develop or modify regulations, and the release of the proposed regulation for public comment.

"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 law.

§ 2. General information.

A. 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 32.1-325 of the Code of Virginia empowers the Board of Medical Assistance Services to make, adopt, and promulgate regulations.

B. Purpose.

These regulations are designed to provide consistent, written guidelines in order to ensure input from interested parties at all stages of the regulatory process.

C. Administration.

The Board of Medical Assistance Services shall have the responsibility for promulgating regulations pertaining to

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public input in the regulatory process. Pursuant to § 32.1-324 C, the director shall have this responsibility and authority when the board is not in session, subject to such rules and regulations as may be prescribed by the board.

D. Application of regulations.

These regulations shall have general application throughout the Commonwealth.

E. 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. All hearings deemed necessary by the director on such regulations, shall be conducted in accordance with § 9-6.14:7.1.

§ 3. Identification of interested parties.

A. Existing data.

The department will maintain a list of those persons and organizations who have demonstrated an interest in certain program regulations in the past through participation in regulatory hearings, correspondence, or other activities with the department.

B. Development of new lists.

Periodically, the department shall publish a notice in The Virginia Register of Regulations, in a newspaper published at *in* Richmond, and in other major newspapers in Virginia localities, a request that any individual or organization interested in participating in the development of specific rules and regulations to notify the office of the director. Any persons or organizations identified in this process will be incorporated in the lists developed under § 3 A. The director may periodically remove from the lists persons or organizations that request to be removed or who fail to respond to an inquiry regarding continued interest.

§ 4. Notification of interested parties.

A. Individual mailings.

When the Director of DMAS determines that specific regulations need to be developed or modified, the program ~~may~~ shall notify by mail the individuals and organizations identified in § 3 of these regulations. The notice shall include the title of the regulation to be developed or modified; a summary of the subject matter; the program contact person, mailing address, and telephone number; and the date by which a notice of a desire to participate in the formation and development process must be received. This rule shall not be mandatory where the department is formulating and developing regulations pursuant to court order, or federally required action or General Assembly action, but whenever time permits every

effort will be made to provide such notice.

B. Notice of intent.

When the department determines that specific regulations need to be developed or modified, the department will publish a Notice of Intent in The Virginia Register of Regulations. This notice will include the title of the regulation to be developed or modified; a summary of the subject matter; the program contact person, mailing address and telephone number; and the date by which a notice of a desire to participate must be received.

C. An announcement shall be sent to members of the Governor's Advisory Committee on the Medicare and Medicaid and the board of the department.

§ 5. Solicitation of input from interested parties.

A. Advisory panels.

The department's rule-making is so frequent that the Governor's Advisory Committee on Medicare and Medicaid will function as the department's on-going advisory panel. Based on the scope and nature of the regulatory issue, the director may, at his discretion, establish a sole function advisory panel to assist in this development or modification.

B. Membership of panels.

Members of these sole-function advisory panels will be individuals and organization representatives identified under § 3 of these regulations and who have expressed the desire to participate in the department's regulatory process. Panel membership will consist of individuals oriented to the department, program issues and constraints of the intended regulations and representatives of entities governed by the proposed regulations. Advisory panels will consist of no less than three nor more than seven members.

C. Operation of panels.

Individual panels will establish their own operating procedure, but in every case a panel will meet once and then will decide on subsequent meetings. All panel and other comments on proposed regulations will be developed for each comment. A written report on the public and panel comments will be prepared and the subsequent decision or action recommended shall be prepared by departmental staff and submitted to the Board of the Department of Medical Assistance Services for review and approval.

D. Exceptions.

The use of an advisory panel may be waived at the director's discretion when:

1. There is no response to the notice of intent,

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2. The office of the Attorney General determines that regulations are promulgated to comply with state or federal law or federal regulation and that no agency discretion is involved, or

3. When the program is formulating and developing regulations pursuant to a court order.

E. Other comments.

All persons and organizations who notify the Department of Medical Assistance Services under § 4 of their desire to comment shall be provided an opportunity to examine regulations in their developmental stage and to provide written comments on these regulations to the department. The department shall document the receipt of these comments and will respond to all comments. This rule shall not be mandatory when the department is formulating and developing regulations pursuant to a court order but every effort will be made to comply.

§ 6. Administrative Process Act procedures.

After regulations have been developed according to these guidelines they shall be submitted for public comment in accordance with the Administrative Process Act.

V.A.R. Doc. No. R94-216; Filed November 9, 1993, 1:50 p.m.

BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Title of Regulation: VR 190-00-04. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-310 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until February 10, 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 § 54.1-310 of the Code of Virginia. The board is empowered to conduct studies and promulgate regulations setting standards for licensure of professions and occupations.

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 as 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 are such that the public has the advantage of participating in the development of the regulations. With the participation of the public, they will become more familiar with the contents and expectations of the 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 Public Participation Guidelines affect approximately 210,000 individuals licensed by various boards and advisory committees within the Department of Professional and Occupational Regulation. 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 of and compliance with this regulation.

Summary:

The Board of Professional and Occupational Regulation's Public Participation Guidelines (PPG's) provide an opportunity for public participation in the promulgation process of regulations. 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 give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPG's 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 PPG's. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 190-00-04. Public Participation Guidelines.

§ 1. Definitions.

The following words and terms, when used in this

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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 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 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 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. No. R94-248; Filed November 10, 1993, 11:51 a.m.

REAL ESTATE APPRAISER BOARD

Title of Regulation: VR 583-01-1. Public Participation Guidelines (REPEALING).

VA.R. Doc. No. R94-221; Filed November 9, 1993, 11:50 a.m.

Title of Regulation: VR 583-01-1:1. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted until February 10, 1994.

(See Calendar of Events section for additional information)

Basis: The statutory authority for the Real Estate Appraiser Board to promulgate the Public Participation Guidelines is found in § 54.1-2013 of the Code of Virginia. The board is empowered to promulgate regulations to do all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. § 3301 et seq.).

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 Appraiser Board Public Participation Guidelines contain substantially similar language as the emergency guidelines, 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 are such that the public has the advantage of participating in the development of the appraiser licensure regulations. With the participation of the public, they will become more familiar with the contents and expectations of the 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: 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 of and compliance with this regulation.

Summary:

The Real Estate Appraiser Board Public Participation Guidelines (PPG's) mandate public participation in the promulgation process of appraiser licensure. 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 give specific instances on when the agency must hold a comment period and when the agency must reevaluate the regulations. The PPG's 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 PPG's. The PPG's specify what meetings and notices will be published in The Virginia Register.

VR 583-01-1:1. 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 (§

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9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Agency" or "board" means the Real Estate Appraiser 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 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 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.

V.A.R. Doc. No. R94-220; Filed November 9, 1993, 11:50 a.m.

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: VR 672-01-1:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 of the Code of Virginia.

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until 4 p.m. on January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-1402 of the Virginia Waste Management Act authorizes the Virginia Waste Management Board (board) to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with federal statutes and regulations.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other

interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the board. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal

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requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

VR 672-01-1:1. Public Participation Guidelines.

§ 1. Definitions.

A. The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

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

"Agency" means the Virginia Department of Waste Management Environmental Quality .

"Approving authority" or "board" means the Virginia Waste Management Board.

"Director" means the director of the Department of Waste Management Environmental Quality or his designee.

"Environmental Protection Law" means the provisions found in the Code of Virginia statutory law authorizing the approving authority or agency, or both, to make regulations or decide cases or containing procedural requirements thereof including but not limited to Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia .

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of the Administrative Process Act.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to regulations on which a decision of the board is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

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

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations

exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C)

B. At the discretion of the approving authority or the agency, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. B. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;
2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. When mail is returned as undeliverable, or upon their request, individuals and organizations may be deleted from any list at the discretion of the agency.*

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a

proposal according to these procedures.

C. The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the approving authority specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. *The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:*

1. *Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach.*

2. *Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.*

D. The agency shall issue a notice of intended regulatory action (NOIRA) NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. *A description of the subject matter of the planned regulation.*

b. *A description of the intent of the planned regulation.*

c. *A brief statement as to the need for regulatory action.*

d. *A brief description of alternatives available, if any, to meet the need.*

e. *A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the NOIRA development of any proposal.*

f. *A request for comments on the costs and benefits of the stated alternatives or other alternatives.*

g. *A statement of the agency's intent to hold at least one public hearing on the proposed regulation*

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after it is published in *The Virginia Register of Regulations*.

h. A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. This statement shall only be required when the agency makes a decision to pursue the alternative provided in subdivision C 2 of this section.

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in *The Virginia Register of Regulations*, time and place of the public meeting(s).

3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication in *The Virginia Register of Regulations*.

E. The agency shall disseminate the NOIRA to the public via the following:

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

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If ~~an ad hoc advisory group has been established~~ *the participatory approach is being used*, the draft regulation shall be developed in consultation with such group. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.

2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

3. 2. A request for comments on the costs and benefits of the proposal.

3. *The identity of any locality particularly affected by the proposed regulation. For purposes of these guidelines the term "locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:

a. A statement of purpose: ~~why the regulation is proposed and the desired end result or objective of the regulation~~ *the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare*.

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost, *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where an agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.

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e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8 of the Code of Virginia. The public hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The public hearing(s) may be held in such location(s) as the agency determines will best facilitate input from interested persons. In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing shall be held in accordance with § 9-6.14:8 of the Code of Virginia.

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the lists established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested

persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to January 27, 1993, the effective date of this regulation shall be processed in accordance with the ~~VR 672-01-1, emergency amendments to VR 672-01-1:1~~ Public Participation Guidelines which are effective from June 30, 1993, until June 29, 1994, unless sooner modified or vacated or superseded by permanent regulations .

B. This regulation when effective shall supersede and repeal emergency amendments to VR 672-01-1:1 Public Participation Guidelines which became effective on June 30, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to January 27, 1993, the effective date of this regulation shall be processed in accordance with this regulation (VR 672-01-1:1).

VA.R. Doc. No. R94-245; Filed November 10, 1993, 11:29 a.m.

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Withdrawal of Proposed Regulation

The Virginia Waste Management Board has **WITHDRAWN** the proposed regulation entitled, "VR 672-40-01, Regulated Medical Waste Management Regulations," that was published in 9:18 VA.R. 3043-3081 May 31, 1993. The board subsequently proposed this regulation in 10:4 VA.R. 656-712 November 15, 1993, as "VR 672-40-01:1, Regulated Medical Waste Management Regulations."

VA.R. Doc. No. R94-194; Filed November 3, 1993, 4:14 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: ~~VR 680-40-01:1~~ VR 680-41-01:1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15 of the Code of Virginia.

Public Hearing Date: January 6, 1994 - 7 p.m.

Written comments may be submitted until 4 p.m. on January 31, 1994.

(See Calendar of Events section)

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for additional information)

Basis: Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Section 62.1-44.15(7) of the State Water Control Law authorizes the State Water Control Board (board) to adopt rules governing the procedures of the board with respect to (i) hearings, (ii) the filing of reports, (iii) the issuance of certificates and special orders, and (iv) all other matters relating to procedure, and to amend or cancel any rule adopted.

Purpose: The APA requires agencies to adopt public participation guidelines prior to initiating the promulgation of any regulation. These proposed amendments set forth the procedures to be followed by the agency for soliciting input from the public during all phases of the regulatory process. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety or welfare. They also require the agency promulgating a regulation to respond to citizens' comments.

Substance: The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Issues: Overall, the proposed amendments present a clearer, expanded set of guidelines for use by the board and the public during the adoption, amendment, or repeal of regulations; they require the board to present additional information for use by the public in understanding and

commenting on regulatory actions; and they are consistent with the guidelines of the other agencies within the Natural Resources Secretariat. The agency does not believe the proposed guidelines present any disadvantages for the public.

Estimated Impacts: No financial impact on regulated entities or the public is expected from the adoption of this proposal since the proposal only imposes requirements on the board. Regulated entities and the public should benefit from the adoption in that the guidelines used by the different environmental agencies will be consistent. In addition, the amount and types of information made available to regulated entities and the public will increase.

Affected Locality: No locality will be particularly affected by the adoption of this regulation since the regulation only imposes requirements on the board. Localities should benefit from the adoption in that the guidelines require the board to present information relating to any locality which may bear any identified disproportionate material impact resulting from a regulation which would not be experienced by other localities.

Applicable Federal Requirements: While there are federal requirements for public involvement in regulation development, the adoption of public participation guidelines is governed by the state's Administrative Process Act.

Summary:

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the Administrative Process Act (APA) enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the

participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

§ 1. Definitions.

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

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

"Agency" means the administrative agency of the State Water Control Board, including staff, etc., established pursuant to the Environmental Protection Law that implements programs and provides administrative support to the approving authority Department of Environmental Quality.

"Approving authority" means the collegial body of the State Water Control Board, established pursuant to the Environmental Protection Law as the legal authority to adopt regulations.

"Director" means the executive director of the State Water Control Board Department of Environmental Quality or his designee.

"Environmental Protection Law" means the provisions found in the Code of Virginia statutory law authorizing the approving authority or agency or both to make regulations or decide easements or containing procedural requirements thereof including, but not limited to, Chapter 3.1 (§ 62.1-44.2 et seq.), Chapter 3.2 (§ 62.1-44.36 et seq.), Chapter 24 (§ 62.1-242 et seq.), and Chapter 35 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Formal hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in § 9-6.14:7.1 of the Administrative Process Act and includes only opportunity for private parties to submit factual proofs in evidential hearings as provided in § 9-6.14:8 of the Administrative Process Act.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Participatory approach" means a method for the use of (i) standing advisory committees, (ii) ad hoc advisory groups or panels, (iii) consultation with groups or

individuals registering interest in working with the agency, or (iv) any combination thereof in the formation and development of regulations for agency consideration. When an ad hoc advisory group is formed, the group shall include representatives of the regulated community and the general public. The decisions as to the membership of the group shall be at the discretion of the director.

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

"Public hearing" means an informal proceeding, held in conjunction with the Notice of Public Comment and similar to that provided for in § 9-6.14:7.1 of the Administrative Process Act, to afford persons an opportunity to submit views and data relative to regulations on which a decision of the approving authority is pending.

"Public meeting" means an informal proceeding conducted by the agency in conjunction with the Notice of Intended Regulatory Action to afford persons an opportunity to submit comments relative to intended regulatory actions.

Unless specifically defined in the Environmental Protection Law or in this regulation, terms used shall have the meanings commonly ascribed to them.

§ 2. General.

A. The procedures in § 3 of this regulation shall be used for soliciting the input of interested persons in the initial formation and development, amendment or repeal of regulations in accordance with the Administrative Process Act. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4 1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

B. At the discretion of the approving authority or the agency, the procedures in § 3 may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

D. C. Any person may petition the approving authority for the adoption, amendment or repeal of a regulation. The petition, at a minimum, shall contain the following information:

1. Name of petitioner;

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2. Petitioner's mailing address and telephone number;
3. Petitioner's interest in the proposed action;
4. Recommended regulation or addition, deletion or amendment to a specific regulation or regulations;
5. Statement of need and justification for the proposed action;
6. Statement of impact on the petitioner and other affected persons; and
7. Supporting documents, as applicable.

The approving authority shall provide a written response to such petition within 180 days from the date the petition was received.

§ 3. Public participation procedures.

A. The agency shall establish and maintain a list or lists consisting of persons expressing an interest in the adoption, amendment or repeal of regulations. *Any person wishing to be placed on any list may do so by writing the agency. In addition, the agency, at its discretion, may add to any list any person, organization or publication it believes will be interested in participating in the promulgation of regulations. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from a list. Individuals and organizations may be deleted from any list at the request of the individual or organization, or at the discretion of the agency when mail is returned as undeliverable.*

B. Whenever the approving authority so directs or upon its own initiative, the agency may commence the regulation adoption process and proceed to draft a proposal according to these procedures.

C. The agency shall form an ad hoc advisory group or utilize a standing advisory committee to assist in the drafting and formation of the proposal unless the approving authority specifically authorizes the agency to proceed without utilizing an ad hoc advisory group or standing advisory committee. When an ad hoc advisory group is formed, such ad hoc advisory group shall include representatives of the regulated community and the general public. *The agency shall use the participatory approach to assist in the development of the proposal or use one of the following alternatives:*

1. *Proceed without using the participatory approach if the approving authority specifically authorizes the agency to proceed without using the participatory approach.*
2. *Include in the Notice of Intended Regulatory Action (NOIRA) a statement inviting comment on whether the agency should use the participatory approach to*

assist the agency in the development of the proposal. If the agency receives written responses from at least five persons during the associated comment period indicating that the agency should use the participatory approach, the agency will use the participatory approach requested. Should different approaches be requested, the director shall determine the specific approach to be utilized.

D. The agency shall issue a notice of intended ~~regulatory action (NOIRA)~~ NOIRA whenever it considers the adoption, amendment or repeal of any regulation.

1. The NOIRA shall include, at least, the following:

a. *A description of the subject matter of the planned regulation.*

b. *A description of the intent of the planned regulation.*

c. *A brief statement as to the need for regulatory action.*

d. *A brief description of alternatives available, if any, to meet the need.*

e. *A request for comments on the intended regulatory action, to include any ideas to assist the agency in the drafting and formation of any proposed regulation developed pursuant to the ~~NOIRA~~ development of any proposal.*

f. *A request for comments on the costs and benefits of the stated alternatives or other alternatives.*

g. *A statement of the agency's intent to hold at least one public hearing on the proposed regulation after it is published in The Virginia Register of Regulations.*

h. *A statement inviting comment on whether the agency should use the participatory approach to assist the agency in the development of any proposal. Including this statement shall only be required when the agency makes a decision to pursue the alternative provided in subsection C 2 of this section.*

2. The agency shall hold at least one public meeting whenever it considers the adoption, amendment or repeal of any regulation unless the approving authority specifically authorizes the agency to proceed without holding a public meeting.

In those cases where a public meeting(s) will be held, the NOIRA shall also include the date, not to be less than 30 days after publication in The Virginia Register of Regulations, time and place of the public meeting(s).

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3. The public comment period for NOIRAs under this section shall be no less than 30 days after publication of the NOIRA in The Virginia Register of Regulations

E. The agency shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in The Virginia Register of Regulations.
2. Distribution by mail to persons on the list(s) established under subsection A of this section.

F. After consideration of public input, the agency may ~~prepare complete~~ the draft proposed regulation and any supporting documentation required for review. If ~~an ad hoc advisory group has been established~~ *the participatory approach is being used*, the draft regulation shall be developed in consultation with ~~such group the participants~~. A summary or copies of the comments received in response to the NOIRA shall be distributed to the ~~ad hoc advisory group participants~~ during the development of the draft regulation. This summary or copies of the comments received in response to the NOIRA shall also be distributed to the approving authority.

G. Upon approval of the draft proposed regulation by the approving authority, the agency shall publish a Notice of Public Comment (NOPC) and the proposal for public comment.

H. The NOPC shall include at least the following:

1. The notice of the opportunity to comment on the proposed regulation, location of where copies of the draft may be obtained and name, address and telephone number of the individual to contact for further information about the proposed regulation.
2. A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.
3. 2. A request for comments on the costs and benefits of the proposal.
3. The identity of any locality particularly affected by the proposed regulation.
4. A statement that an analysis of the following has been conducted by the agency and is available to the public upon request:
 - a. A statement of purpose: why the regulation is proposed and the desired end result or objective of the regulation the rationale or justification for the new provisions of the regulation, from the standpoint of the public's health, safety or welfare.

b. A statement of estimated impact:

(1) ~~Number~~ *Projected number* and types of regulated entities or persons affected.

(2) Projected cost, *expressed as a dollar figure or range*, to regulated entities (and to the public, if applicable) for implementation and compliance. In those instances where ~~an~~ *the* agency is unable to quantify projected costs, it shall offer qualitative data, if possible, to help define the impact of the regulation. Such qualitative data shall include, if possible, an example or examples of the impact of the proposed regulation on a typical member or members of the regulated community.

(3) Projected cost to the agency for implementation and enforcement.

(4) The beneficial impact the regulation is designed to produce.

c. An explanation of need for the proposed regulation and potential consequences that may result in the absence of the regulation.

d. An estimate of the impact of the proposed regulation upon small businesses as defined in § 9-199 of the Code of Virginia or organizations in Virginia.

e. *A description of provisions of the proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed.*

e. f. A discussion of alternative approaches that were considered to meet the need the proposed regulation addresses, and a statement as to whether the agency believes that the proposed regulation is the least burdensome alternative to the regulated community that fully meets the stated purpose of the proposed regulation.

f. g. A schedule setting forth when, after the effective date of the regulation, the agency will evaluate it for effectiveness and continued need.

5. The date, time and place of at least one public hearing held in accordance with § 9-6.14:7.1 of the Code of Virginia to receive comments on the proposed regulation. ~~(In those cases where the agency elects to conduct an evidential hearing, the notice shall indicate that the evidential hearing will be held in accordance with § 9-6.14:8.)~~ The *public* hearing(s) may be held at any time during the public comment period and, whenever practicable, no less than 10 15 days prior to the close of the public comment period. The *public* hearing(s) may be held in such location(s) as the agency determines will best facilitate input from

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interested persons. *In those cases where the agency elects to conduct a formal hearing, the notice shall indicate that the formal hearing will be held in accordance with § 9-6.14.8 of the Administrative Process Act.*

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

J. The agency shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for:

a. Publication in The Virginia Register of Regulations.

b. Publication in a newspaper of general circulation published at the state capital and such other newspapers as the agency may deem appropriate.

2. Distribution by mail to persons on the list(s) established under subsection A of this section.

K. The agency shall prepare a summary of comments received in response to the NOPC and the agency's response to the comments received. *The agency shall send a draft of the summary of comments to all public commenters on the proposed regulation at least five days before before final adoption of the regulation.* The agency shall submit the summary and agency response and, if requested, submit the full comments to the approving authority. The summary, the agency response, and the comments shall become a part of the agency file and after final action on the regulation by the approving authority, made available, upon request, to interested persons.

L. If the agency determines that the process to adopt, amend or repeal any regulation should be terminated after approval of the draft proposed regulation by the approving authority, the agency shall present to the approving authority for their consideration a recommendation and rationale for the withdrawal of the proposed regulation.

M. Completion of the remaining steps in the adoption process shall be carried out in accordance with the Administrative Process Act.

§ 4. Transition.

A. All regulatory actions for which a NOIRA has been published in The Virginia Register of Regulations prior to ~~February 10, 1993~~, *the effective date of this regulation shall be processed in accordance with the ~~VR 680-40-01~~ emergency amendments to VR 680-41-01:1 Public Participation Guidelines which are effective from June 29, 1993, until June 28, 1994, unless sooner modified or vacated or superseded by permanent regulations .*

B. *This regulation when effective shall supersede and repeal emergency amendments to VR 680-41-01:1 Public Participation Guidelines which became effective on June 29, 1993. All regulatory actions for which a NOIRA has not been published in The Virginia Register of Regulations prior to ~~February 10, 1993~~, the effective date of this regulation shall be processed in accordance with this regulation (~~VR 680-40-01:1~~).*

VA.R. Doc. No. R94-246; Filed November 10, 1993, 11:23 a.m.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

Title of Regulation: VR 675-01-01. Public Participation Guidelines (REPEALING).

VA.R. Doc. No. R94-223; Filed November 9, 1993, 2:46 p.m.

Title of Regulation: VR 675-01-01:1. Public Participation Guidelines.

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

Public Hearing Date: N/A – Written comments may be submitted until January 31, 1994.

(See Calendar of Events section for additional information)

Basis: Sections 9-6.14:7.1 and 54.1-201 of the Code of Virginia provide the Board of Waterworks and Wastewater Works Operators 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 waterworks and wastewater works operators.

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 operators 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 Waterworks and Wastewater Works Operators on June 24, 1993. The proposed Public Participation Guidelines for the Board for Waterworks and Wastewater Works Operators contain substantially similar language as 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

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well as the general public the opportunity to participate in the formation and development of regulations for waterworks and wastewater works operators. 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 Public Participation Guidelines affect approximately 4,450 operators. 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 Waterworks and Wastewater Works Operators Public Participation Guidelines (PPG's) mandate public participation in the formulation, adoption and amendments to new and existing regulations governing the licensure of operators. 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 675-01-01:1. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Agency" or "board" means the Board for Waterworks and Wastewater Works Operators.

"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

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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. No. R94-222; Filed November 9, 1993, 2:45 p.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulations.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0007. Regulations Governing Special Education Programs for ~~Handicapped~~ Children and Youth with Disabilities in Virginia.

Statutory Authority: §§ 22.1-214 and 22.1-215 of the Code of Virginia; § 4 of Article VIII of the Constitution of Virginia.

Effective Date: January 1, 1994.

Summary:

The need for revision of Virginia's special education regulations has been identified throughout the education community. The need for regulatory change came from both new federal and state legislation and additional indicators outside of the legislative sphere. Specifically, the federal review of this department's special education compliance produced a corrective action plan indicating a need for regulatory amendment. Also, the Mandates Committee had suggested that the regulations be reviewed from the particular perspective of bringing the state regulatory requirements in line with those of the federal regulations to the maximum extent appropriate.

In addition to those state and federal sources, a recurring call for regulatory change has come from the local school divisions, particularly the superintendents and special education directors. The project team developing these regulations considered participation of local school divisions to be a critical step in that development process. By soliciting input from local school division personnel, the team sought to foster a cooperative spirit in order to produce maximum benefit to those students in Virginia in need of special education services.

With the hope of identifying unmet special education needs, the team also sought input from parents, parent organizations, and the State Special Education Advisory Committee. Much of that input was especially helpful in highlighting language in the regulations that needed clarification. Whenever possible, ambiguous or overly formal language has been rewritten so that all users will find it more understandable.

Due to the multiple reasons behind this review of these regulations, the resulting regulations contain a number of revisions. These revisions fall into four general categories. Changes in federal legislation required that Virginia's regulations be amended to

include the provision of assistive technology services and devices, a statement of transition services in student IEPs, inclusion of traumatic brain injury in the list of qualifying disabilities, inclusion of rehabilitation counseling in the list of related services and a change in language from "handicapped child" to "child with a disability."

A change in the Code of Virginia required that the regulations be amended to eliminate specific mandatory assessment components. Remaining in the regulations is the federal standard that each child be tested in all areas related to the suspected disability and that parents be given an opportunity to participate in the consideration of the assessments to be performed.

Pursuant to recommendations from a department project study team, Attention Deficit Hyperactivity Disorder/Attention Deficit Disorder (ADHD/ADD) has been added to the conditions listed under "Other Health Impairment."

Three significant changes were made in the regulations in order to comport more closely with federal requirements. Under these regulations, a child may be referred for consideration for special education either to the Child Study Committee or directly to the special education administrator, the requirement that a local school division reevaluate a child with a disability prior to changing that child's placement has been eliminated and some of the detailed procedures regarding local special education advisory committees and local special education plans are no longer required.

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 Dr. Margaret Roberts, Department of Education, Monroe Building, 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2540. There may be a charge for copies.

VR 270-01-0007. Regulations Governing Special Education Programs for Children with Disabilities in Virginia.

PART I. DEFINITIONS.

Final Regulations

§ 1.1. Definitions.

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

"Age of eligibility" means all eligible ~~handicapped~~ children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are ~~mentally retarded, physically handicapped, seriously emotionally disturbed, speech or language impaired, hearing impaired, visually impaired, autistic, multihandicapped, severely and profoundly handicapped, other health impaired, or having a specific learning disability, identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, [a physical disability,] a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness or who are otherwise handicapped~~ have other disabilities as defined by the Board of Education, who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation programs;
5. Training or technical assistance for a child with disability or, if appropriate, that child's family;
6. Training or technical assistance for professionals

(including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ, or are otherwise substantially involved in the major life function of children with disabilities.

"Audiology" means [services provided by a qualified audiologist and includes]:

1. Identifying and evaluating Identification of children with hearing loss;
2. Determining Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing;
3. Selecting and fitting an appropriate aid and evaluating the effectiveness of amplification; and
3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conversation;
4. Creation and administration of programs for prevention of hearing loss;
4. 5. Counseling and guidance of pupils and , parents and teachers regarding hearing loss ;
6. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.

"Autism" means a behaviorally defined syndrome; the essential functions are typically manifested prior to 30 months of age and include disturbances of:

1. Developmental rates or sequences;
2. Responses to sensory stimuli; and
3. Speech, language, and cognitive capacities and capacities to relate to people, events and objects; means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. [The term does not apply if a child's education performance is adversely affected primarily because the child has a serious emotional disturbance as defined in these regulations.]

"Change in identification" means a change in the eligibility committee's determination of the child's [

primary] disability.

"Change in placement" means:

1. The change in a child's academic offerings from general to special education and from special education to general education;
2. The expulsion or long-term suspension of a student with a disability;
3. The placement change which results from a change in the identification of a disability;
4. The change from a public school to a private day, residential or state operated program; from a private day, residential or state operated program to a public school; or to a placement in a separate facility [for educational purposes] ;
5. Graduation.

["Change in placement procedures" means:

1. Written notice to the parent;
2. IEP committee meeting;
3. Parent consent to change the placement.]

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Children with disabilities" means those children evaluated, in accordance with these regulations, as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment [; a physical disability] , a serious emotional disturbance, a severe or profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness, who because of these impairments, need special education and related services.

"Comprehensive programs and services" means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every handicapped child with a disability ages two to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to handicapped children and youth with disabilities .

"Consent" means:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought in his native language, or other mode of communication;

2. The parent understands and agrees, in writing, to the carrying out of the activity for which consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and

3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked any time prior to the time limits set forth in § 3.5 3.4 .

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.

"Current evaluation" means one that has been completed within 365 calendar days or less.

"Days" are specified as either "calendar days" or "administrative working days." "Administrative working days" means days exclusive of Saturdays, Sundays, and officially designated holidays of the local school division for all local school division personnel . "Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day not a Saturday, Sunday, or school holiday.

"Deaf" "Deafness" means a hearing impairment which that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which that adversely affects educational performance.

"Deaf-blind" "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

"Developmentally delayed" "Developmental delay" means a child below age eight who exhibits a significant delay in one or more of the following areas of development for a child below age 8 :

1. Cognitive ability
2. Motor skills
3. Social/adaptive behavior
4. Perceptual skills
5. Communication skills.

"Direct services" means services provided to a handicapped child with a disability by the state directly,

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by contract, or through other arrangements.

"Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

"Emotional disturbance": see *"Serious emotional disturbance."*

"Evaluation" means ~~assessments procedures~~ used to determine whether a child is ~~handicapped has a disability~~ and the nature and extent of the special education and related services that the child needs. The term means ~~assessments procedures~~ used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.

"Free appropriate public education" (FAPE) means special education and related services which:

1. Are provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the Board of Education;
3. Include preschool, elementary school, middle school or secondary school, or vocational education; and
4. Are provided in conformity with an individualized education program.

FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP). However, under § 504, each recipient LEA must provide an education which includes services that are ~~"...designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met..."~~ Those regulations state that implementation of an IEP, in accordance with Part B, is one means of meeting the "FAPE" requirement.

"Handicapped children" means those children evaluated, in accordance with these regulations, as being mentally retarded, hard of hearing, deaf, speech or language impaired, autistic, visually impaired, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, severely and profoundly handicapped, multihandicapped, or having a specific learning disability, who, because of these impairments, need special education and related services.

"Hard of hearing" *"Hearing impairment"* means a hearing impairment an impairment in hearing, whether

permanent or fluctuating, ~~which~~ that adversely affects a child's educational performance but which is not included under the definition of ~~"deaf"~~ *"deafness"* in this section.

"Impartial hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:

- (i) 1. By a person employed by a public agency involved with the care or education of the child; or
- (ii) 2. By a person having a personal or professional interest which would conflict with his objectivity in the hearing.

A hearing officer is not an employee of the ~~LEA~~ *Local Education Agency (LEA)* or ~~SEA~~ *State Education Agency (SEA)* solely because he is paid by the agency to serve as a hearing officer.

"Implementation plan" means the plan developed by the LEA designed to operationalize the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan shall include the name and position of the individual in the local school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.

"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation. ~~An independent educational evaluation may incorporate part or all of the four core evaluations utilized for determining eligibility in Virginia.~~

"Individualized education program" (IEP) means a written statement for each ~~handicapped~~ child with a disability developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of ~~handicapped~~ children with disabilities, the teacher, the parents of such child, and whenever appropriate, such child; ~~which statement shall include:~~ . An IEP shall include:

1. A statement of the present levels of educational performance;
 - a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.
 - b. The statement should be written in objective

measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.

c. There should be a direct relationship between the present level of performance and the other components of the IEP.

2. A statement of annual goals, including short-term instructional objectives ; .

3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs ; .

4. The projected date for initiation and anticipated duration of the services [(month, day, and year)] ; and .

5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved.

6. Necessary information regarding the Literacy Testing Program (LTP) (see § 3.4 B 5 f).

7. A statement of the needed transition services for each student beginning no later than age 16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. The transition services must address each of the following areas: (i) the development of employment and other post-school adult living objectives; (ii) instruction; (iii) community experiences; and (iv) if appropriate, [a question acquisition] of daily living skills and functional vocational evaluation, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include in the IEP a statement to that effect and the basis for that determination in the IEP.

8. A statement as to whether or not the student will participate in Family Life Education.

"Initial placement" means the first public agency placement in either a public school, state operated program, or private school program providing special education or related services.

"In-service training" means training other than that received by an individual in a full-time program which leads to a degree.

"Interpreting personnel" for the hard of hearing or deaf means personnel providing educational interpreting services for hard of hearing or deaf students children with

hearing impairments, deafness or both meeting qualifications set forth under the section on Qualified Professionals.

"Learning disability": see "Specific learning disability."

"Local educational agency" (LEA) means the local school division or other public agencies responsible for providing educational services to handicapped children and youth with disabilities .

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, handicapped children with disabilities , including children in public or private institutions or other care facilities, are educated with children who are not handicapped disabled , and that special classes, separate schooling or other removal of handicapped children with disabilities from the regular educational environment occurs only when the nature or severity of the handicap disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

"Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition disability which results in the child's need for special education and related services.

"Mentally retarded" "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

"Multihandicapped" "Multiple disabilities" means concomitant impairments (such as mentally retarded mental retardation - blind blindness , mentally retarded mental retardation - orthopedically impaired orthopedic impairment , etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children with deaf-blindness .

"Native language" as defined by § 703(a)(2) of the Bilingual Education Act , when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.

1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).

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["Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.]

"Notification" means written statements in English and in the primary language of the parent's home, and oral communication in the primary language of the parent's home.

"Occupational therapy" [means services provided by a qualified occupational therapist, or services provided under the direction or supervision of a qualified occupational therapist and] includes:

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
2. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and
3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orthopedically impaired" "Orthopedic impairment" means a severe orthopedic impairment which that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which that cause contracture).

"Other health impaired impairment" means having limited strength, vitality or alertness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder/attention deficit hyperactivity disorder, or diabetes which that are chronic or acute and that adversely affects affect a child's educational performance.

"Parent" means a parent, a guardian, or a person acting as a parent of a child, or a surrogate parent who has been appointed pursuant to § 3.6. The term does not include the state if the child is a ward of the state. The term "parent" means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child to the contrary. The definition term also includes persons acting in the place of a parent such as a grandmother grandparent or stepparent with whom the child lives; as

well as the persons who are legally responsible for a child's welfare. The term "parent" also means a surrogate parent appointed pursuant to provisions set forth in the regulations. A child 18 years or older may assert any rights under these regulations in his own name.

"Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.

"Physical education" means the development of:

1. Physical and motor fitness;
2. Fundamental motor skills and patterns; and
3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

The term includes special physical education, adapted adaptive physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction; and includes the evaluation, testing, treatment, reeducation and rehabilitation by physical, mechanical, or electronic measures and procedures of individuals who because of trauma, disease or birth defect present physical or emotional disorders. The term "physical therapy" does not include the use of Roentgen rays and radium for diagnostic or therapeutic purposes or the use of electricity for shock therapy and surgical purposes, including cauterization.

"Preschool handicapped children" means children (below age five) who may be identified by any of the previously defined handicapping conditions or developmentally delayed.

"Program change" means any change in the way special education services are provided to a child as determined by the child's individualized education program.

["Program" means the special education and related services as determined by a child's individualized educational program.]

"Psychological services" means includes [those services provided by a qualified psychologist or services provided under the direction or supervision of a qualified psychologist]:

1. Administering psychological and educational tests;

and other assessment procedures;

2. Interpreting assessment results;
3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and
5. Planning and managing a program of psychological services, including psychological counseling for children and parents.

"Public agency" means the state educational agency (SEA), local educational agencies, intermediate educational units, and any other public agencies which that are responsible for providing education to ~~handicapped~~ children with disabilities .

"Public expense" means that a ~~required educational and evaluation service is provided at no cost to the parent~~ the LEA either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the parent .

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcement, handbills, brochures, and other methods which are likely to succeed in providing information to the public.

"Qualified" means that a person has met the state board educational agency approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which he is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service, and Virginia licensure requirements as designated by state law.

"Recipient" means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.

"Recreation" [~~means~~ includes]:

1. Assessment of leisure function;
2. Therapeutic recreation services;
3. Recreation program in schools and community agencies; and

4. Licensure education.

"Reevaluation" means completion of a new assessment components in accordance with the applicable criteria evaluation .

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a ~~handicapped child with a disability~~ to benefit from special education, and includes ~~speech~~ speech-language pathology and audiology ; ; psychological services ; ; physical and occupational therapy ; ; recreation, including therapeutic recreation; early identification and assessment of disabilities in children ; ; counseling services, including rehabilitation counseling; and medical services for diagnostic or evaluation purposes. The terms term also included includes school health services, social work services in schools, and parent counseling and training. Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of ~~handicapping conditions~~ disabilities and the provision of services to minimize the effects of such conditions. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a ~~handicapped child with a disability~~ to benefit from special education.

There are certain kinds of services which might be provided by persons from varying professional backgrounds and with a variety of operational titles, depending upon requirements in individual states. For example, counseling services might be provided by social workers, psychologists, or guidance counselors, and psychological examiners, psychometrists, or psychologists, depending upon state standards.

Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.

"School health services" means services provided by a qualified school nurse or other qualified person.

"Screening" means those processes which are used routinely with all children to help determine educational strengths and weaknesses.

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"Section 504" means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.

"Seriously emotionally disturbed" "Serious emotional disturbance" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree ; which that adversely affects a child's educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory, or health factors;
2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
3. Inappropriate types of behavior or feelings under normal circumstances;
4. A general pervasive mood of unhappiness or depression; or
5. A tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.

"Severely and profoundly handicapped" "Severe and profound disability" means individuals who:

1. Have primary disabilities that severely impair cognitive abilities, adaptive skills, and life functioning;
2. May have associated severe behavior problems;
3. May have the high probability of additional physical or sensory handicaps disabilities ; and
4. Require significantly more educational resources than are provided for the mildly and moderately handicapped children with mild and moderate disabilities in special education programs.

"Significant change in identification or placement" includes:

1. The change in a child's academic offerings from general to special education and from special education to general education (reevaluation, written notice and consent are required);
2. The expulsion of a handicapped student (reevaluation to determine whether expulsion is permissible and written notice for expulsion is required; consent is not required);
3. The placement change which results from a change

in the identification of a handicapping condition; for example, mentally retarded to learning disabled (reevaluation, written notice and consent are required);

4. The change from a public school to a private day, residential or state operated program, from a private day, residential or state operated program to a public school, or to a placement in a separate facility (reevaluation, written notice and consent are required).

"Social services" (visiting teacher/school social worker) means work services in schools" includes [those services provided by a qualified visiting teacher or social worker]:

1. Collecting and integrating data to prepare a sociocultural assessment on a child referred for or identified with a handicapping condition Preparing a social or developmental history on a child with a disability ;
2. Interpreting the socio-cultural assessment;
3. 2. Group and individual counseling with the child and family;
4. 3. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and
5. 4. Mobilizing school and community resources to enable the child to receive maximum benefit from his educational program; and learn as effectively as possible in his educational program.
6. Offering consultation to school personnel and parents.

"Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child with a disability , including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions instruction conducted in a classroom, in the home, in hospitals, and institutions and in other settings and instruction in physical education .

1. The term includes speech speech-language pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child with a disability , and is considered "special education" rather than a "related service" under state standards.

2. The term also includes vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a handicapped child with a disability .

3. The terms in this definition are defined as follows:

a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped nondisabled students or their parents as a part of the regular education program.

b. "Physical education" means the development of (i) physical and motor fitness; (ii) fundamental motor skills and patterns; and (iii) skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports). The term includes special physical education, adaptive physical education, movement education, and motor development.

c. "Vocational education" means organized educational programs which ~~that~~ are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

The definition of "special education" is a particularly important one under these regulations since a child is not handicapped unless he needs special education. The definition of "related services" also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services" and the child (because not "handicapped") is not covered under the Act.

4. The definition of "special education" is a particularly important one. While a child may be considered to have a disability under other laws, he does not have a disability under these regulations unless he needs special education. If a child does not need special education, there can be no related services since the provision of a related service must be necessary for a child to benefit from special education.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual handicaps disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps; disabilities; of mental retardation ; ; of emotional disturbance ; ; or of environmental, cultural, or economic disadvantage.

"Speech or language impaired impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice

impairment, which adversely affects a child's educational performance.

"Speech-language pathology" includes:

1. Identification of children with speech or language disorders;
2. Diagnosis and appraisal of specific speech or language disorders;
3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;
4. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.

"State agencies" means the State Departments of Education; Health; Mental Health; Mental Retardation; and Substance Abuse Services; Corrections; Rehabilitative Services; Social Services; Correctional Education; and the Department for the Visually Handicapped.

"State educational agency" (SEA) means the Virginia Department of Education.

"Support services" means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent-training activities relating to a free appropriate public education for handicapped children with disabilities.

"Surrogate parent" means a person appointed in accordance with procedures set forth to provide children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with the protection of procedural safeguards.

"Testing" means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.

"Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities described must:

1. Be based on the individual student's needs, taking

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into account the student's preferences and interests; and

2. Include:

- a. The development of employment and other post-school adult living objectives;
- b. Instruction;
- c. Community experiences; and
- d. If appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education if they are provided as specially designed instruction, or related services if they are required to assist a student with a disability to benefit from special education. The list of activities above is not intended to be exhaustive.

"Transportation" means includes :

1. Travel to and from school and between schools;
2. Travel in and around school building; and
3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a handicapped child with a disability

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

"Visiting teacher/school social worker" (See social services).

"Visually impaired" "Visual impairment" means a visual impairment which in vision that, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children partial sight and blindness .

"Vocational education" means organized educational programs which or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals in for paid or unpaid employment in such fields as agriculture, business

occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields; and in other occupations, current or emerging occupations requiring other than a baccalaureate or advanced degree . and vocational student organization activities as an integral part of the program; and for purposes of this paragraph, the term "organized education program" means only (i) instruction (including career guidance and counseling) related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (ii) the acquisition (including leasing); maintenance and repair of instructional equipment; supplies, and teaching aides; but the terms do not mean the construction, acquisition, or initial equipment or buildings, or the acquisition or rental of land. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

"Ward of the state" means all parental rights and responsibilities for the care and custody of a child have been terminated by court order or applicable law , and the child has been placed in the care and custody of the state.

PART II. RESPONSIBILITIES OF THE STATE DEPARTMENT OF EDUCATION.

§ 2.1. Right to a free appropriate public education.

The Virginia Department of Education shall ensure that all handicapped persons with disabilities from two to 21, inclusive, residing in the Commonwealth of Virginia are identified, evaluated, and have available a free and appropriate public education. The provisions set forth in these regulations shall apply to all public and private schools and agencies in the Commonwealth which provide special education and related services to handicapped children and youth with disabilities .

§ 2.2. Functions of the Department of Education.

In keeping with its responsibilities in this regard, the Department of Education (SEA) shall perform the functions which follow:

- A. 1. Review and submit to the Board of Education for approval the Annual Special Education Plan/Report and Funding Applications from each local school division or other public agencies responsible for providing educational services to handicapped children and youth (LEA) with disabilities .

B. 2. Prepare and submit for public hearing, for comment from members of the State Special Education Advisory Committee, and for approval by the Board of Education and the U.S. Department of Education, the State Plan for Education of ~~Handicapped~~ *Children with Disabilities*. Such plan shall contain assurances of and procedures for as prescribed by federal law :

1. Public notice and opportunity for comment;
2. Right to education policy statement;
3. Full educational opportunity goal and timelines;
4. Policy on priorities;
5. Child identification;
6. Individualized education program;
7. Procedural safeguards;
8. Least restrictive environment;
9. Protection in evaluation procedures;
10. Comprehensive system of personnel development;
11. Participation of handicapped children and youth in private schools;
12. Placement of handicapped children and youth in approved private nonsectarian schools;
13. Recovery of funds;
14. Hearing on applications from each LEA;
15. Monitoring and evaluation;
16. Interagency agreements.

C. 3. Develop procedures for implementing state and federal laws and regulations pertaining to the education of ~~the handicapped~~ *children with disabilities*

D. 4. Assist LEAs and other participating state agencies in the implementation of state and federal laws and regulations pertaining to the education of ~~the handicapped~~ *children with disabilities* by providing technical assistance and consultative services.

E. 5. Review and evaluate compliance of LEAs with state and federal laws and regulations pertaining to the education of ~~the handicapped~~ *children with disabilities* [and require corrective actions where needed].

F. 6. Review and evaluate compliance of approved

private nonsectarian schools for ~~handicapped~~ *children with disabilities* with state and federal laws and regulations pertaining to the education of ~~the handicapped~~ *children with disabilities*.

G. 7. Establish and maintain a state advisory committee composed of persons involved in or concerned with the education of ~~handicapped~~ *children and youth with disabilities*. The membership must include, but need not be limited to, at least one representative from each of the groups as follows:

1. a. ~~Handicapped~~ *Individuals with disabilities* ;
2. b. Teachers of ~~the handicapped~~ *children with disabilities* ;
3. c. Parents of ~~handicapped~~ *children and youth with disabilities* ;
4. d. State and local education officials;
5. e. Special education program administrators;
6. f. Public and private institutions of higher education; and
7. g. Advocacy groups.

8. Provide at least annually to the State Special Education Advisory Committee all findings and decisions of due process hearings, with all personally identifiable information deleted, and in addition, a summary of the complaint findings.

H. 9. Develop and implement a comprehensive personnel development plan which focuses on pre- and in-service educational needs.

I. 10. Develop procedures for disseminating significant information derived from research, demonstration programs and projects involving ~~the handicapped~~ *children with disabilities*.

J. 11. Secure agreements from state agency heads regarding appropriate roles and responsibilities for the identification, evaluation, placement, and delivery of educational and related services to all ~~handicapped~~ *children and youth with disabilities*.

K. 12. Disburse the appropriated funds for the education of ~~handicapped~~ *children and youth with disabilities* in the Commonwealth of to LEAs and state operated programs which are in compliance with state and federal laws and regulations pertaining to the education of ~~the handicapped~~ *children with disabilities*

L. 13. Establish procedures to ensure that the placements of ~~handicapped~~ *children and youth with*

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disabilities by other public agencies are in compliance with state and federal laws and regulations pertaining to the education of the ~~handicapped children with disabilities~~ .

M. 14. Establish reasonable tuition costs and other reasonable charges for each approved private nonsectarian school for ~~the handicapped children with disabilities~~ based on the special education and services provided. Charges for other services, in addition to room and board, will be established in cooperation with other state agencies having similar responsibilities. All such cost and charges shall be established in accordance with the process determined by the Interdepartmental Committee on Rate Setting for Children's Facilities.

N. 15. Report and certify annually to the appropriate federal agency ~~the following: the number of children with disabilities in local school divisions and state operated programs receiving special education and related services on December 1.~~

1. The number of ~~handicapped children and youth in local school divisions receiving special education and related services on December 1;~~ and

2. The number of ~~handicapped children and youth in state-operated programs receiving special education and related services on October 1.~~

O. 16. ~~Publish~~ Prepare an annual report which summarizes special education and related services provided ~~handicapped children and youth with disabilities~~ .

P. 17. Review, investigate, and act on any allegations of substance which may be made by public or private agencies, individuals, or organizations of actions taken by any public agency that are contrary to the requirements of laws and regulations affecting the education of ~~handicapped children and youth with disabilities~~ .

Q. Report to the State Special Education Advisory Committee all findings and decisions of due process hearings. In addition, the complaint findings shall be reported at least annually.

R. 18. Establish procedures designed to fully inform parents and ~~handicapped children and youth with disabilities~~ of educational rights and due process procedures.

[S. 19. Provide private schools with copies of all state regulations and standards relating to the education of ~~the handicapped children with disabilities~~ and revisions of these regulations and standards as they occur.]

[T. 19. 20.] Afford private schools to which a public

agency has referred or placed a child with a disability the opportunity to participate in the development and revision of regulations and standards which apply to them.

PART III. RESPONSIBILITIES OF LOCAL SCHOOL DIVISIONS LEAs AND STATE AGENCIES.

§ 3.1. *Applicability of requirements.*

The requirements set forth in this section ~~part~~ are applicable to local school divisions and state agencies providing education and related services for ~~handicapped children and youth with disabilities~~ and are developed in accordance with state and federal laws and regulations .

§ 3.2. The requirements, developed in accordance with state and federal laws and regulations, are consistent with the Department of Education's responsibilities outlined as follows:

A. Identification, evaluation, and eligibility.

1. Target ages and eligibility.

2. Definitions of handicapping conditions.

3. Child find.

4. Screening.

5. Referral.

6. Evaluation.

7. Assessment components.

8. Eligibility.

9. Termination of services.

10. Child's status pending determination of eligibility.

B. Service delivery.

1. Free appropriate public education.

2. Individualized education program.

C. Procedural safeguards.

1. Due process.

2. Confidentiality of information.

3. Complaint procedure.

D. Surrogate parent procedures.

1. Role of surrogate parents.

2. Appointment of surrogate parents.

3. Identification and recruitment of surrogate parents.

4. Qualifications of surrogate parents.

5. Rights of surrogate parents.

E. Administration and governance:

1. Plans, applications, and reports.

2. Personnel development.

3. Local advisory committee.

4. Regional programs.

§ 3-3. § 3.2. Identification, evaluation, and eligibility.

A. Target ages and eligibility.

Each annual special education plan/report and funding application shall include procedures which ensure that all children and youth residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may be ~~handicapped~~ *have disabilities*, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for determining children and youth who are receiving needed special education and related services and those who are not receiving such services.

B. Definitions of handicapping conditions:

Definitions of handicapping conditions shall be as defined in Part I of this regulation.

C. B. Child find.

1. Each local school division shall, at least annually, conduct a public awareness campaign to:

a. Inform the community of a person's statutory right to a free appropriate education and the availability of special education programs and services;

b. Generate referrals; and

c. Explain the nature of ~~handicapping conditions~~ *disabilities*, the early warning signs of ~~handicapping conditions~~ *disabilities*, and the need for early intervention.

2. Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall:

a. Provide for personal contacts with community groups, public and private agencies and

organizations; and

b. Provide information in the person's native language or primary mode of communication.

3. There shall be evidence of involvement of parents and community members; as well as the local special education advisory committee, in the required child find and community awareness campaign.

4. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data.

5. All children ages two to 21, inclusive, not enrolled in school and who are suspected of having a ~~handicapping condition~~ *disability* shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services.

6. Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages two to 21 inclusive.

D. C. Screening.

1. Each local school division shall establish and maintain screening procedures to assure the identification of ~~handicapped persons requiring special education~~ *children with disabilities* residing within its jurisdiction and requiring special education. All procedural safeguards shall be maintained during the screening process. These include the following:

a. Written notice when appropriate;

b. Confidentiality; and

c. Maintenance of student's scholastic record.

2. The screening process for all children enrolled in the school division is as follows:

a. All children, within 60 administrative working days of initial enrollment in a public school, shall be screened in the following areas to determine if formal assessment is indicated:

(1) Speech, voice, and language; and

(2) Vision and hearing.

b. All children (through grade three), within 60 administrative working days of initial enrollment in

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public schools, shall be screened for fine and gross motor functions to determine if formal assessment is indicated.

c. Specific measures or instruments will be employed which use:

- (1) Both observational and performance techniques; and
- (2) Techniques which guarantee nondiscrimination.

3. There shall be established a formal child study committee in each school to review records and other performance evidence of those children referred through a screening process or referred by a source other than through screening; for example, when a parent or external service provider makes a referral. All referrals for child study shall be made to the principal or designee. The committee shall consist of at least three persons, including include :

a. Referring source, as appropriate (except when referring source would breach confidentiality of child);

a. b. Principal, or designee;

b. c. Teachers; and

e. d. Specialists ; and .

d. Referring source, as appropriate (except when referring source would breach confidentiality of child);

The committee must have at least three persons in attendance.

4. The child study committee shall meet within 10 administrative working days following referral.

5. Actions by the committee shall be documented in writing and shall include information upon which a decision was based. The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.

E. D. Referral [for evaluation]

1. Children suspected of being handicapped having a disability shall be referred by this committee the child study committee or other referring source to the special education administrator for formal assessment. The If referral to the special education administrator is from the child study committee , it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of being handicapped having a disability . The special education administrator, or designee, shall:

a. 1. Record the date, reason for referral and name(s) of the person/agency making the referral;

b. 2. Implement procedures for maintaining the confidentiality of all data and institute procedural safeguards to:

(1) a. Inform the parent of the referral in the native language or primary mode of communication, unless it is clearly not feasible to do so;

(2) b. Advise the parent of his rights in the native language or primary mode of communication; and

(3) c. Secure written permission of the parent for the formal assessment;

e. 3. Initiate formal assessment procedures; and

d. 4. Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.

F. E. Evaluation.

[1. The LEA shall establish procedures for the evaluation of referred children which include the following:

a. Written prior notification (in native language);

b. Opportunity for independent evaluation;

c. Written parental consent;

d. Assignment of surrogate parent when necessary;

e. Opportunity for an impartial hearing;

f. Confidentiality;

g. Opportunity for examination of records; and

h. Nondiscriminatory testing.]

2. [1. 2.] The LEA shall establish policies and procedures to ensure that tests and other evaluation materials the following :

a. Tests and other evaluation materials:

a. (1) Are neither culturally nor racially discriminatory;

b. (2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

e. (3) Have been validated for the specific purpose for which they are used; and

~~4.~~ (4) Are administered by trained personnel in conformance with the instructions provided by their producer ; .

(1) *b.* Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(2) *c.* Tests are selected and administered so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(3) *d.* No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child;

(4) *e.* The evaluation shall be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability;

(5) [~~2.~~ 3.] For a child suspected of being learning disabled having a specific learning disability , the multidisciplinary team shall include:

(a) *a.* The child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and

(b) *b.* At least one person qualified to conduct individual diagnostic examinations of children and knowledgeable in the handicapping condition , such as a specific learning disabilities teacher, school psychologist, speech-language pathologist, or remedial reading teacher .

[~~4.~~ For a child suspected of having a learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.]

[~~3.~~ 5.] The LEA shall establish procedures to ensure

a. That each child is assessed [*by a qualified professional*] in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general

intelligence, academic performance, communicative status, and motor abilities. [*This may include educational, medical, sociocultural, psychological, or developmental assessments. Reports from assessments must be provided in writing.*] However, the hearing of each handicapped child with a disability shall be tested during the eligibility process prior to placement in a special education program. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who fails two hearing screening tests. The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test.

b. Parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed. [*Parents must be provided written notification of this right.*]

4. The LEA shall solicit and consider pertinent information from the agency, if any, that has been assigned legal custodial rights of a handicapped child concerning evaluation of such child.

5. [~~4.~~ 6.]The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for such services by the child study committee to the special education administrator evaluation is received by the special education administrator .

G. Assessment components:

The eligibility of children for special education programs and related services shall be based upon a formal assessment involving the components as follows:

1. **Educational:** Written report describing current educational performance and identifying instructional strengths and weaknesses in academic skills and language performance.

2. **Medical:** Written report from a licensed physician indicating general medical history and any medical/health problems which may impede learning.

3. **Sociocultural:** Written report from a qualified visiting teacher or school social worker which describes family history, structure and dynamics; developmental and health history; and social/adaptive behavior in the home, school, and community. The information is obtained through interviews with parents or primary caretakers in addition to use of other social appraisal methods.

4. **Psychological:** Written report from a qualified psychologist based on the use of a battery of appropriate instruments which shall include individual

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intelligence test(s), and psychoeducational tests.

5. **Developmental.** Written report of assessment of how the child functions in the major areas of development such as cognition, motor, social/adaptive behavior, perception, and communication, where required in the regulations for assessing the specified handicapping conditions.

6. **Other,** such as speech, language, clinical/psychiatric, etc., where appropriate or necessary. Minimum assessment components shall be completed by qualified professional(s) prior to review by the eligibility committee for children suspected of being handicapped in one or more of the following areas: (These requirements are also applicable when the triennial review is conducted.)

a. **Mentally retarded.** Psychological, medical, sociocultural and educational/developmental.

b. **Learning disabled.** Educational, medical, sociocultural, and psychological; observation of academic performance in regular classroom by at least one team member who is knowledgeable about learning disabilities other than the child's regular teacher (or in the case of a preschool or out-of-school student, the observation shall be made in an appropriate environment).

[5. 7.] A multidisciplinary team may determine that a child has a specific learning disability if:

(1) a. The child does not achieve commensurate with his age and ability levels in one or more of the areas listed in subdivision G 6 b (2) E 5 b of this section when provided with learning experiences appropriate for the child's age and ability levels; and

(2) b. The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(a) (1) Oral expression;

(b) (2) Listening comprehension;

(c) (3) Written expression;

(d) (4) Basic reading skill;

(e) (5) Reading comprehension;

(f) (6) **Mathematics** *Mathematical* calculations; or

(g) (7) **Mathematics** *Mathematical* reasoning.

c. The multidisciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement

is primarily the result of:

(a) (1) A visual, hearing or motor handicap disability ;

(b) (2) Mental retardation;

(c) (3) *Serious* emotional disturbance; or

(d) (4) Environmental, cultural, or economic disadvantages.

e. **Seriously emotionally disturbed.** Educational, medical, sociocultural, and psychological.

d. **Hearing impaired.** Medical (to include complete audiological assessment which will assess inner and middle ear functioning); educational, sociocultural, and psychological.

e. **Visually impaired.** Medical (to include examination by an eye specialist); educational, sociocultural, and psychological.

f. **Orthopedically impaired.** Medical (to include evaluation(s)/prescription(s) for occupational therapy or physical therapy when appropriate); educational, sociocultural, and psychological.

g. **Other health impaired.** Medical (with special examination report as appropriate); educational, sociocultural, and psychological.

h. **Severely and profoundly handicapped.** Medical (to include evaluation(s)/prescription(s) for occupational or physical therapy when appropriate); educational/developmental, sociocultural, and psychological.

i. **Speech or language impaired.** Speech and language, hearing screening, educational, and other reports as appropriate. An audiological assessment must be performed on each child who fails two hearing screening tests. When the child has not made satisfactory progress after receiving two years of speech service a comprehensive assessment must be completed which consists of the following: medical, sociocultural, psychological, and educational.

j. **Preschool.** Medical, sociocultural, developmental, and psychological.

k. **Autism.** Medical (with special examination reports as appropriate); educational/developmental, sociocultural, speech and language, and psychological.

l. **Multihandicapped.** Medical (with special examination reports as appropriate); educational, sociocultural, and psychological.

m. Deaf/blind: Medical (to include complete audiological assessment which will assess inner and middle ear functioning and examination by an eye specialist), educational, sociocultural and psychological.

H. Qualified professionals:

1. Audiologist: See teacher certification regulations.

2. Educational interpreting for hard of hearing or deaf students: If the IEP Committee determines that the hard of hearing or deaf student will require educational interpreting services, then qualified personnel shall be provided in accordance with the student's mode of communication.

Educational personnel providing interpreting for students using sign language shall have completed and passed a Virginia Quality Assurance Screening at Level 1 or higher. Personnel shall have completed and passed at Level 2 screening after July 1, 1992, and at Level 3 screening after July 1, 1995. Personnel may have an equivalent or higher registry of interpreters for the deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

Personnel providing educational interpreting services for hard of hearing or deaf students using cued speech shall be certified as Cued Speech Interpreters by the National Cued Speech Association at Level 1, or higher, by July 1, 1990, and at Level 2, or higher, by July 1, 1992.

Personnel providing educational interpreting services for the hard of hearing or deaf students requiring oral interpreting shall have completed and passed a Virginia Quality Assurance Screening for the Deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

3. Occupational therapist: A qualified occupational therapist is a professional who shall hold at least a Bachelor's degree in occupational therapy from an accredited school. In addition, a qualified occupational therapist is one who maintains or is eligible for annual registration with the American Occupational Therapy Association.

4. Physical therapist: A qualified physical therapist is one who holds a current license or is eligible for licensure in the field of physical therapy from the State Board of Medicine.

I. F. Eligibility.

Eligibility of children for special education programs and related services shall be determined by an eligibility committee.

1. Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessment components assessments and the special education administrator, or designee. At least one school division representative serving on the eligibility committee must have either assessed or observed the child.

2. The eligibility committee shall review the assessment components assessments, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a handicapping condition disability which requires special education and related services. Once eligibility has been determined, adding a related service to an existing IEP is an IEP committee function. The assessment component assessments or other relevant data which is that are required or necessary for the proposed related service is are forwarded to the IEP committee in order that appropriate goals and objectives can be developed.

3. The eligibility committee shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records.

4. The eligibility committee shall have a written summary which that consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. This summary shall be signed by each eligibility committee member present.

a. The written summary shall be maintained in the child's confidential file(s); and

b. This The summary statement of the eligibility committee's essential deliberations shall be forwarded by the committee to the Individualized Education Program (IEP) IEP committee upon determination of eligibility. This The summary statement may include other recommendations. A statement by each eligibility committee member that the summary statement reflects his conclusions shall be included. If the report does not ; reflect a particular member's conclusion, then a separate statement shall be submitted by the team member presenting his conclusions.

c. The written summary concerning students identified as having a specific learning disabled disability shall also include:

(1) A statement indicating whether or not the child has a specific learning disability;

(2) The basis for making the determination;

(3) Relevant behavior noted during the observation and the relationship of the behavior to the child's

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academic functioning;

(4) Educationally relevant medical findings, if any;

(5) Information indicating whether or not there is a severe discrepancy between the child's achievement and ability which cannot be corrected without special education and related services;

(6) Effects of any environmental, cultural, or economic disadvantage, as determined by the team; and

(7) A statement by each eligibility committee member that the report reflects his conclusions. If it does not ~~;~~ *reflect a particular member's conclusion, then the team member must submit a separate statement presenting his conclusions.*

J. G. Termination of service(s).

1. ~~Partial~~ Termination of one or more ~~special education related~~ services for a child is a function of the IEP committee. ~~Partial~~ Termination of ~~special education and~~ related services occurs when the IEP committee determines that the service(s) are no longer required and ~~parental consent is obtained in order for the child to benefit from special education~~.

2. ~~Complete~~ Termination of all special education services for a child (i.e., removal from special education) shall be the responsibility of the eligibility committee. The IEP committee shall refer a student to the eligibility committee when they believe the child is no longer eligible to receive special education. ~~Complete~~ Termination of special education services occurs:

1. ~~a. When~~ If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services ~~and parental consent has been obtained~~; or

2. ~~b. If~~ the parent withdraws permission for the child to remain in special education[;] This is ~~considered a change in placement. [, then] the decision of the parent to withdraw the child from special education must be reviewed by the LEA pursuant to the change in placement procedures.~~ If the LEA disagrees with the withdrawal decision and attempts to resolve parental withdrawal of consent through informal methods and are unsuccessful, the LEA must use other measures as necessary to ensure that parental withdrawal of consent will not result in the withdrawal of a necessary free appropriate public education.

K. H. Child's status pending determination of eligibility.

The child shall remain in the current placement during

determination of eligibility for special education and related services.

L. I. Child's status; previous enrollment in special education.

If a child enrolled in a special education program transfers from one LEA to another LEA or from out of state to an LEA, the child shall be placed with *written* consent of the parent in a special education program consistent with the current IEP. The IEP committee may decide to continue with the placement. If the IEP committee believes the transfer will necessitate a ~~significant~~ change in educational placement, then the eligibility committee shall review the existing evaluations and conduct new evaluations or update them as appropriate. Pending the eligibility committee's and IEP committee's determination, the child shall be placed with consent of the parent in a special education program consistent with the current IEP. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the LEA, the child will remain in the private residential school until the eligibility committee and IEP committee have made a decision.

§ 3.4. § 3.3. Service delivery.

A. Free appropriate public education.

1. Age of eligibility ~~timelines~~. A free appropriate public education shall be available to all ~~handicapped~~ children *with disabilities*, ages two to 21, inclusive, residing within the jurisdiction of each LEA. Each LEA shall ~~establish~~ *have established* the goal of providing a full educational opportunity for all ~~handicapped~~ children *with disabilities* from birth to 21, inclusive, residing within their jurisdiction; ~~to be fully implemented no later than September 1, 1990~~.

2. Continuum of alternative placements.

a. Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of ~~handicapped~~ children *who need special education and related services with disabilities*.

(1) *The continuum must include the alternative placements listed in the definition of special education (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). The continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is, where some or all goals and objectives of the student's individualized educational program are met in the general education setting with age-appropriate peers.*

(1) (2) No single model for the delivery of services to any specific population or category of ~~handicapped~~ children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for ~~handicapped~~ students with disabilities). All placement decisions must be based on the individual needs of each child.

(2) (3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement.

(3) (4) ~~Handicapped~~ Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular ~~handicapped~~ child with a disability the alternative placement is appropriate as documented by the IEP.

b. If a local school division is unable to provide a free appropriate public education to a ~~handicapped~~ child with a disability and it is not appropriately available in a state facility, other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for the ~~handicapped children with disabilities~~ approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate-Setting as adopted by the Boards of Education, Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.

[*e. If a local school division is unable to provide a free appropriate public education to a child with a disability within the public school setting, the local school division may refer the child to the local family assessment and planning team, as provided by the Comprehensive Services Act for At-Risk Youth and Families. This team may create an individualized family service plan in conjunction with the IEP. The local community policy and management team shall pay for the services identified on the individualized family services plan, in accordance with its local policies.]*

3. Least restrictive environment (LRE).

a. Each LEA shall establish and implement

procedures which satisfy requirements as follows:

(1) To the maximum extent appropriate, ~~handicapped~~ children with disabilities , including those in public or private institutions or other care facilities, are educated with children who are not ~~handicapped disabled~~ ; and

(2) Special class placement, separate schooling or other removal of ~~handicapped~~ children with disabilities from the regular educational environment occurs only when the nature or severity of the ~~handicap~~ disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

b. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for ~~nonhandicapped~~ nondisabled children, each LEA shall ensure that each ~~handicapped~~ child with a disability participates with ~~nonhandicapped~~ nondisabled children in those services and activities, to the maximum extent appropriate to the needs of the ~~handicapped~~ child with a disability .

c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (see Placements, § 3.4 3.3 B 8.)

4. Safeguards in evaluation, eligibility and placement.

a. In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Ensure that the placement decision is made in conformity with the least restrictive environment (see Least Restrictive Environment, § 3.4 3.3. A 3.)

b. If it is determined that a child is ~~handicapped~~ has a disability and needs special education and related services, an ~~individualized education program~~ IEP must be developed for the child in accordance with the regulations.

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5. Transportation.

a. Each ~~handicapped child enrolled in and attending with a disability placed in~~ an education program provided by the local school division shall be entitled to transportation to and from such [~~school or class program~~] at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities.

b. If an LEA enters an agreement with another LEA for the provision of special education or related services for a ~~handicapped child with a disability~~, such child shall be transported to and from such program at no cost to the parent.

~~c. When, pursuant to an IEP, a local school division initiates educational placement of a handicapped child in a facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services, the local school division is responsible for the payment of reasonable transportation costs attendant thereto.~~

~~d. c. If a handicapped child with a disability is placed in a state residential school for the deaf and the blind, the responsibility for transportation resides with the respective state school. However, when such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.~~

e. If an LEA places a handicapped child in a private school or facility, then the LEA shall provide transportation as follows:

(1) At day schools on all school days as required in the IEP and specified in the Formal Agreement for Services between the LEA and the private nonsectarian school.

(2) At residential schools, at openings and closing of the private school and for those holidays or vacation periods during the school year when the private school is officially closed, or in accordance with other provisions as written in the Formal Agreement for Services to implement the IEP.

(3) The LEA may, in lieu of providing transportation, and with the consent of the parents, allot funds to pay the reasonable cost of transportation for attendance to day and residential schools, which shall be equivalent to the amount established by the LEA as mileage reimbursement to school personnel, or an amount equivalent to the lowest common carrier rate between the location of the private school and the LEA.

6. Reevaluation. Each LEA shall ensure that an evaluation of the child, based on required procedures,

is conducted:

a. Every three years, or more frequently if conditions warrant;

b. If the child's parent or teacher requests an evaluation;

c. Anytime a significant change in placement is being considered and the evaluations are not current.

a. A full reevaluation in all areas related to the suspected disability must be conducted (i) every three years; (ii) if conditions warrant a full reevaluation at an earlier date; or (iii) if the child's parent or teacher requests a [full] reevaluation.

b. A full reevaluation need not consist of all of the same assessments conducted during the initial evaluation as long as the reevaluation includes assessment in all areas related to the suspected disability. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation, and conditions do not warrant a full reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the LEA may limit the assessment to those areas in which the parent or teacher requested ; or .

~~d. c. Notice is required for the triennial evaluation. Notice and consent are required for those evaluations requested by the LEA other than for triennial evaluations all reevaluations .~~

[7. Nonacademic and extracurricular services and activities. Each LEA shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

8. Physical education.

a. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE.

b. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

1. The child is enrolled full time in a separate facility; or

2. The child needs specially designed physical education, as prescribed in the child's IEP.

c. Special physical education. If specially designed

physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs.

d. Education in separate facilities. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with subdivisions 8 a and c of this subsection.]

B. Individualized education program.

1. Responsibility. The LEA shall ensure that an IEP is developed and implemented for each ~~handicapped~~ child with a disability in its jurisdiction, including such children placed in private schools or facilities.

2. Accountability.

a. An IEP must:

(1) Be in effect before special education and related services are provided to a child; and

(2) Be developed within 30 calendar days of a determination that the child needs special education and related services, and to be implemented as soon as possible following the IEP ~~meetings~~ meeting .

b. Each LEA is responsible for initiating and conducting meetings to develop, review and revise a child with a disability's IEP.

~~b.~~ c. Each LEA shall initiate and conduct meetings periodically to review each child's IEP and, where appropriate, revise its provisions. A meeting must be held for this purpose at least once a year.

~~e.~~ d. Each LEA must provide special education and related services to a ~~handicapped~~ child with a disability in accordance with an IEP.

3. Participants in meeting.

a. The LEA shall ensure that each meeting includes participants as follows:

(1) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher;

(3) One or both of the child's parents (see Parent Participation, § 3-4 3.3 B 4);

(4) The child, ~~when~~ if appropriate;

(5) Other individuals, at the discretion of the parents or LEA.

b. For a ~~handicapped~~ child with a disability who has been evaluated for the first time, the LEA shall ensure that:

(1) A member of the evaluation team participates in the meeting; or

(2) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

c. If a purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite: (i) the student; and (ii) a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered, and if an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Parent participation.

a. Each LEA shall take steps to ensure that one or both of the parents ; ~~or a representative of the agency assigned legal custody~~, of the ~~handicapped~~ child with a disability are present at each meeting or are afforded the opportunity to participate, including:

(1) Notifying the parents ~~and agency assigned legal custody~~ of the meeting early enough to ensure that they will have an opportunity to attend, and

(2) Scheduling the meeting at a mutually agreed on time and place.

b. The notice given the parents ~~and agency assigned legal custody~~ must indicate the purpose, time and location of the meeting, and who will be in attendance.

c. If a purpose of the meeting is the consideration of transition services for a student, the notice must also:

(1) Indicate this purpose;

(2) Indicate that the LEA will invite the student; and

(3) Identify any other agency that will be invited to send a representative.

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e. *d.* If neither parent can attend, then the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls.

d. *e.* A meeting may be conducted without the child's parent(s) attending if the LEA is unable to convince them that they should attend. In this case, the LEA must have a record of the attempts to arrange a mutually agreed on time and place, such as:

- (1) Detailed records of telephone calls made or attempted and the results of those calls;
- (2) Copies of correspondence sent to the parents and any responses;
- (3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.

e. *f.* The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

f. *g.* The LEA shall give the parent and custodial agency a copy of the IEP.

5. Content of the individualized education program. The IEP for each child must include:

a. A statement of the child's present level of educational performance ; .

(1) *The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and nonacademic areas.*

(2) *The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included.*

(3) *There should be a direct relationship between the present level of performance and the other components of the IEP.*

b. A statement of annual goals, including short-term instructional objectives ; .

c. A statement of the specific special education and related services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs.

d. The projected dates for initiation of services and

the anticipated duration of the services ; and (month, day, and year).

e. Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.

f. Reasonable accommodations to take the Literacy Testing Program (LTP) shall be provided as appropriate and designated on the IEP. The school division shall document on the IEP that the LTP or its accommodations have been presented and objected to or accepted, at the appropriate times. This provision of designation of accommodations on the IEP deals only with children who are handicapped as defined by these regulations.

f. *For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included:*

(1) *Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner);*

(2) *Whether the student will postpone taking any of the literacy tests (a decision to [exempt the student from participating postpone] must be reviewed during the annual IEP review or sooner);*

(3) *Reasonable accommodations to take the literacy tests if the student needs them.*

The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.

g. The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting.

The IEP must include the following areas: (i) instruction; (ii) community experiences; and (iii) the development of employment and other post-school adult living objectives, unless the IEP committee determines that services are not needed in one or more of those areas. The IEP committee must then include a statement to that effect together with the basis for that determination in the IEP.

h. A statement as to whether or not the student will participate in Family Life Education.

6. Agency responsibilities for transition services.

a. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP.

b. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

7. Placements. Each LEA placing the child shall ensure that:

a. The educational placement of each child with a disability:

- (1) Is determined at least annually;
- (2) Is based on his IEP; and
- (3) Is as close as possible to the child's home.

b. The various alternative placements, discussed in § 3.3 A 2 of these regulations, are available, to the extent necessary, to implement the IEP for each child with a disability.

c. Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.

e. The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.

6. 8. Private school placement.

a. Before a local school division or LEA places a handicapped child with a disability in, or refers a child to, a private school or facility, the local school division or LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child.

b. Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an

IEP that a private school or facility may be required when the IEP is completed, the local school division or LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division or LEA shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

c. After a handicapped child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the local school division or LEA.

d. If the private school or facility initiates and conducts these meetings, the local school division or LEA shall ensure that the parents and a local school division or LEA representative:

- (1) Are involved in any decision affecting the child's IEP; and
- (2) Agree to any proposed changes in the program before those changes are implemented.

e. When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the local school division or LEA.

f. Whenever an eligible handicapped child with a disability is placed in an approved private school or facility by a local school division or LEA, steps shall be taken to ensure that all rights extended to any child educated in public school programs are shall be available to him.

[g. Each LEA shall provide to all private schools to which the LEA has referred or placed a child with a disability with copies of all state regulations and standards relating to the education of children with disabilities and revision of these regulations and standards as they occur.]

7. Handicapped children in parochial or other private schools. If a handicapped child is enrolled in a parochial or other private school and requires special education and related services from a public agency, the local school division shall:

a. Initiate and conduct meetings, in accordance with the preceding requirements, to develop and review an IEP for the child; and

b. Ensure that a representative of the parochial or other private school attends each meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

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8. Placements. Each LEA placing the child shall ensure that:

a. Each handicapped child's educational placement:

- (1) Is determined at least annually;
- (2) Is based on his IEP; and
- (3) Is as close as possible to the child's home.

b. The various alternative placements are available, to the extent necessary, to implement the IEP for each handicapped child. The local school division shall consider placement of a handicapped child in a private nonsectarian program only after it has been determined that the local school division is unable to provide free appropriate public education for a handicapped child either locally or through arrangement with other local school divisions, and such a program is not appropriately available in a state facility.

c. Unless a handicapped child's IEP requires some other arrangement, the child is educated in the school which he would attend if not handicapped.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs.

e. The placement decision shall include consideration of the child's social and personal needs, derived from the child's socio-cultural assessment, as well as the child's level of educational functioning.

9. Handicapped Children with disabilities in private schools not placed or referred by public agencies.

a. If a handicapped child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows:

(1) Each local school division shall provide special education and related services designed to meet the needs of private school handicapped children with disabilities residing in its jurisdiction;

(2) Each local school division shall provide private school handicapped children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.

b. The needs of private school handicapped children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of handicapped children with disabilities enrolled in public schools.

c. Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the use of mobile educational services and equipment.

d. c. A local school division may provide special education and related services to private school handicapped children with disabilities which are different from the special education and related services it provides to public school children, if:

(1) The differences are necessary to meet the special needs of the private school handicapped children with disabilities; and

(2) The special education and related services are comparable in quality, scope, opportunity for participation to those provided to public school children with needs of equal importance.

e. d. Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

10. Children with disabilities on homebound instruction. Homebound instruction shall be deemed appropriate for a handicapped child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.

11. Handicapped children suspended or expelled. Suspension or expulsion of children with disabilities.

a. Suspensions of 10 days or less. This is a short-term suspension where is when the child is removed from class (i.e., an in-school suspension) or school for less than 10 school days. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's handicap disability and the misconduct.

b. Long-term suspensions greater than 10 days and expulsions greater than 10 days.

(1) This is where When the child is removed from class or school for more than 10 consecutive school days: Where a disciplinary action involving long-term suspension or expulsion of a handicapped

child is being considered, a determination must be made as to whether or not there is a direct causal relationship between the child's handicap disability and the misconduct. This determination must be made by the IEP committee pursuant to the change of placement procedures.

(2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition:

(a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(b) The child's teacher;

(c) One or both of the child's parents;

(d) The child, if appropriate;

(e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(f) Other individuals, at the discretion of the parents or LEA.

(3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of 10 days or more greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended.

(4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection or if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nonhandicapped nondisabled child.

(5) In the case of an expulsion or long-term suspension, parental consent is not required prior to expelling the child.

c. Dangerous handicapped student with a disability. LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the handicap disability. LEAs, however, may use normal disciplinary measures for a child who exhibits dangerous behavior to include, for example, time outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been

determined to be caused by his disability by [~~filling~~ for obtaining] an injunction, based on dangerousness of the student, from a court of competent jurisdiction.

12. Educational interpreting for hard of hearing or deaf students. If the IEP Committee determines that for the hard of hearing or deaf child educational interpreting services are appropriate, then qualified personnel shall be provided in accordance with the child's mode of communication.

12. Assistive technology. Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's:

a. Special education;

b. Related services; or

c. Supplementary aids and services.

[~~C~~. Qualified professionals.

1. Audiologist. A qualified audiologist is one who is licensed by the Virginia Board of Audiology and Speech-Language Pathology or the American Speech and Language Association.

2. Educational interpreting for children with hearing impairments or deafness. If the IEP committee determines that the child with hearing impairment or deafness will require educational interpreting services, then qualified personnel shall be provided in accordance with the student's mode of communication.

a. Educational personnel providing interpreting for students using sign language shall have completed and passed a Virginia Quality Assurance Screening at Level 2, or higher, screening and at Level 3, or higher, screening after July 1, 1995. Personnel may have an equivalent or higher Registry of Interpreters for the Deaf certificate (excluding certification in reverse skills) in lieu of the Virginia Quality Assurance Screening certificate.

b. Personnel providing educational interpreting services for hard of hearing or deaf students using cued speech shall be certified as cued speech interpreters by the National Cued Speech Association at Level 2, or higher, and at Level 3 or higher by July 1, 1995.

e. Personnel providing educational interpreting services for the hard of hearing or deaf students requiring oral interpreting shall have completed and passed a Virginia Quality Assurance Screening for the Deaf certificate (excluding certification in reverse skills).

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3. *Physical therapist. A qualified physical therapist is one who holds a current license or is eligible for licensure in the field of physical therapy from the state Board of Medicine.*

C. Educational interpreting services.

1. *Educational personnel providing interpreting services for students using sign language shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation).*

2. *Educational personnel providing interpreting services for students using cued speech shall have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National Cued Speech Association Cued Speech Transliterator Certificate.*

3. *Educational personnel providing interpreting services for students requiring oral interpreting shall have met Virginia Quality Assurance Screening's minimum requirements for competency on the Registry of Interpreters for the Deaf Code of Ethics.*

4. *An individual providing interpreting services for students using sign language or cued speech who does not hold the required Virginia Quality Assurance Screening level or Registry of Interpreters for the Deaf certificate (excluding certificate in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate may be employed according to all of the following criteria:*

a. *The individual must have a Virginia Quality Assurance Screening Level I upon hiring date in any local education agency or state operated program in Virginia (or the implementation date of these regulations, whichever is later). The local education agency/state operated program shall inform the Department of Education of the person's name, social security number and hiring date; and*

b. *Each individual must achieve Level III Virginia Quality Assurance Screening or any Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate by the third anniversary date of hiring in any local education agency or state operated program (or implementation date of these regulations, whichever is later); and*

c. *The local education agency/state operated program shall annually submit a professional development plan to the Virginia Department of Education on behalf of the individual.]*

§ 3.5. § 3.4. Procedural safeguards.

A. Due process.

1. *Procedural safeguards.* Each LEA shall establish and implement procedural safeguards as follows:

a. The parent of a *handicapped child with a disability*, upon request, shall be afforded an opportunity to inspect and review all education records involving:

(1) The identification, evaluation or educational placement of the child; or

(2) The provision of a free appropriate public education to the child. (see: Management of the Student's Scholastic Records.)

b. The parent of a *handicapped child with a disability* shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained.

c. The parent of a *handicapped child with a disability* shall have the right to obtain an IEE of the child:

(1) Such IEE will be at public expense if the parent disagrees with the evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate *then*, the parent still has the right to an IEE, but not at public expense.

(2) Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.

(3) The results of the IEE *whether or not at public expense* :

(a) Must be considered by the LEA in any decision regarding a free appropriate public education for the child; and

(b) May be presented as evidence at a hearing under ~~this section~~ § 3.4 A 2 of these regulations .

d. The parent of a *handicapped child with a disability* shall be given written notice within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.

e. The notice shall include:

(1) A full explanation of all procedural safeguards

available to the parents;

(2) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and the reasons why those options were rejected;

(3) A description of the nature, purpose, and use of any evaluation procedure, test, record, or report the LEA used as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the LEA's proposal or refusal.

f. Information contained in the notice shall be:

(1) Written in language understandable by the public; and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, then the LEA shall take steps to ensure:

(a) That the notice is translated orally or by other means to the parent in his native language or other mode of communication;

(b) That the parent understands the content of the notice; and

(c) That there is documentation that the requirements in subdivisions (a) and (b) of subdivision A 1 f (3) of this section have been met.

g. Written parental consent shall be obtained before:

(1) Preplacement evaluation;

(2) Initial placement of a ~~handicapped~~ child with a disability in a program providing special education and related services ; and : [*Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement. ; and*]

[~~(3)~~ Any change in program/placement, including any partial or complete termination of special education and services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement.

h. Written parental consent shall be obtained for the following:

(1) Any change in identification of a ~~handicapped~~ child with disabilities ; and

(2) Any evaluation which is conducted other than the ~~assessment components required for the triennial evaluations~~. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.)

Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement.]

i. [~~h. i.~~ Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within 10 administrative working days after notice is received. If the parent fails to notify the LEA within 10 administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action.] If the parent refuses to give consent, the LEA shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.

2. Impartial due process hearing. Each LEA or the parent of a child determined or believed to be ~~handicapped~~ have a disability , shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental ~~refusals for evaluation or provision of special education and related services~~. For purposes of this subdivision, the time when a disagreement occurs shall be deemed to mean when such disagreement is discovered or by the exercise of due diligence reasonably should have been discovered. ~~withholding of consent where these regulations require the LEA to obtain consent .~~

3. Child's status during proceedings. The child's status during proceedings shall be as follows:

a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding a ~~complaint these regulations~~ , unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over 10 days; however, the procedures may include

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time out, detention, restriction of privileges, or temporary suspension up to 10 days.

b. If the issue involves an application for initial admission to ~~an~~ LEA public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.

4. Mediation. The regulations do not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. ~~Should the mediation process be formalized as an intervening step within the impartial due process hearing procedure, appropriate policy shall be established.~~ However, such mediation shall not extend the ~~procedure resolution of a hearing~~ beyond the 45 calendar days unless otherwise approved and documented ~~as in the best interests of the child~~ by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.

5. Commencement of the due process hearing.

a. Request for a hearing shall be made *in writing* to the ~~local school board~~ LEA or other public agency board as appropriate.

b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area [*as well as the attorney fees provision of § 3.4 A 12*] when:

- (1) The parent requests the information; or
- (2) The parent or the LEA initiate(s) a hearing.

c. ~~A hearing officer shall be appointed according to the Hearing Officer System or Rules of Administration Promulgated by the Supreme Court of Virginia.~~ The LEA shall ensure that the appointment is made *Virginia Supreme Court appoints a hearing officer* within five administrative working days following the request for a hearing to facilitate compliance with the 45 calendar days timeline.

6. Qualifications, removal, substitution and challenge of hearing officers.

"Impartial hearing officer" means a person selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted:

~~f.~~ a. By a person employed by an agency involved with the care or education of the child; or

~~2.~~ b. By a person having a personal or professional interest which would conflict with his objectivity in the hearing.

~~See: Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia for regulations governing Appointment, qualifications, retention, training, selection, removal and disqualification of hearing officers are governed by the Hearing Office System Rules of Administration Promulgated by the Supreme Court of Virginia .~~

7. Responsibilities of LEA; prehearing.

a. The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parent(s) and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained.

b. The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer.

c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing ~~or reviewing~~ officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the ~~hearing appeal~~, upon request, and free of charge.

[*d. Each LEA shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.*]

8. Responsibilities of the hearing officer; prehearing.

a. The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which are convenient to both parties, and

~~b.~~ The hearing officer shall notify both parties to the hearing, and the SEA, in writing, of the time, date and location of the hearing.

~~e.~~ b. The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If

so, the hearing officer shall send copies of correspondence to the attorneys of the parties.

d. c. The hearing officer shall ascertain from the parents whether the hearing will be open.

e. d. The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings. If a tape recorder is used, then the hearing officer shall be provided a written list of speakers in order of appearance, or and at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record.

f. e. The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing.

g. f. The hearing officer may schedule a prehearing conference to be attended by the parties and attorneys, if applicable appropriate. Such a conference may be requested by the hearing officer or the parties to the hearing to simplify or eliminate issues.

h. g. The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence at the hearing.

(1) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held.

(2) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection thereto.

h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with [§ 2-6 § 3.5] of these regulations.

9. Rights of parties to the hearing.

a. Any party to a hearing shall have the right to:

(1) Be accompanied and advised by counsel or by individuals with special knowledge or training concerning the problems of handicapped children with disabilities, without being in violation of the

provisions of § 54.1-3904 of the Code of Virginia.

(2) Present evidence and confront, cross-examine, and request the hearing officer to compel the attendance of witnesses.

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing.

~~(4) Obtain a written or electronic verbatim record of the hearing upon request and free of charge.~~

~~(5)~~ (4) Receive written findings of fact and decisions rendered by the hearing officer.

~~(6) Receive a copy of the implementation plan.~~

b. The parent(s) involved in a hearing must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public ;

(3) Receive a copy of the implementation plan; and

(4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.

10. Due process hearing procedure.

a. The rights of all parties to the hearing shall be protected by the hearing officer.

b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. It may be prudent to The hearing officer may excuse witnesses after they testify to limit the number of expert witnesses present at the same time ; or to sequester witnesses during the hearing.

c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning.

e. d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive in light of new evidence not admissible in the formal hearing. This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served.

d. Witnesses must be seated so as to ensure that testimony is clearly recorded, either by a stenographer or recording equipment, to permit an accurate record of the proceedings.

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e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.

f. The hearing officer shall ensure that the local school division has appointed a surrogate parent who is acting to protect the educational interests and rights of the child when:

(1) No parent or person who has been allowed to act as a parent by the natural parent(s) or guardians(s) can be identified;

(2) The LEA, after reasonable efforts, cannot discover the location of the parent;

(3) The child is in legal custody of a public agency and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law.

g. f. The hearing officer, in the course of the proceedings, shall determine *include in the written findings a determination of the following:*

(1) Whether or not the requirements of notice to parents were satisfied;

(2) Whether or not the child is handicapped *has a disability* ;

(3) Whether or not the child needs special education and related services; and

(4) Whether or not the LEA is supplying a free appropriate public education. *These determinations may or may not be central issues in the appeal, but nevertheless, are focal questions in any hearing conducted under these provisions.*

h. g. The hearing officer shall make no presumptions in the case and shall base his findings of fact and decision(s) solely upon the preponderance of the evidence presented at the hearing and applicable state and federal laws *or regulations law* .

i. h. The hearing officer shall report findings of fact and decision(s) to both parties to the appeal, the LEA, and to the SEA. *The SEA shall provide copies of summaries of the hearing reports to the State Special Education Advisory Committee after deleting any personally identifiable information.*

j. i. A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative

working days of the date of the hearing decision.

11. Administrative appeal and impartial review.

a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary;

(6) Make an independent decision upon completion of the review; and

(7) Give a copy of written findings and the decision(s) to the parties to the appeal, the LEA and to the SEA in the manner prescribed.

b. The decision made by the reviewing official is final *and binding on all parties* , unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.

12. Attorney's fees.

a. In any such action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a *handicapped child or youth with a disability* who is the prevailing party.

b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.

~~12~~ 13. Timelines for hearings and reviews.

a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing:

(1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and

(2) A copy of the decision is mailed to the parties and the SEA.

b. The SEA shall ensure that not later than 30 calendar days after the receipt of a request for a review:

(1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and

(2) A copy of the decision is mailed to the parties.

c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in subdivisions a and b of subdivision A ~~12~~ 13 of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA.

d. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.

~~13~~ 14. Costs of due process hearing ~~hearings~~ and state review.

a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone

expenses), expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes or stenographer). The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees.

b. The SEA shall be responsible for all approved costs for state reviews.

~~14~~ 15. Implementation plan.

a. The LEA shall develop an implementation plan within 45 calendar days of ~~concluding the rendering of a due process hearing decision or the withdrawal of a hearing or review request~~. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing or reviewing officer, and the SEA.

b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation or appropriate action.

~~15~~ 16. Due process file. The LEA shall maintain a file containing the following:

a. A copy of the hearing and reviewing officer's findings of fact and decision(s);

b. A copy of the implementation plan;

c. A copy of the electronic or verbatim transcript of the hearing proceedings; and

d. A copy of all documents and exhibits presented at the due process hearing and state level review.

B. Confidentiality of information.

The confidentiality of information shall be as set forth in the Management of the Student's Scholastic Record.

C. Complaint procedure.

Complaints regarding violations of rights of parents or ~~handicapped children with disabilities or both~~ shall be addressed to the ~~complaint officer designated by the SEA~~ Superintendent of Public Instruction or designee, with the

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additional requirements as follows:

1. The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated a requirement of a federal or state law(s) or regulation(s) that applies to a program the Individuals with Disabilities Education Act (IDEA) or these regulations .

2. The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the ~~complaint officer~~ Superintendent of Public Instruction or designee .

3. Upon receipt of a complaint, the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed is in compliance with applicable law and regulations.

4. Within seven administrative days of the receipt of a written, signed complaint, the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall send notification in writing to each complainant and LEA against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA personnel. *The notification sent to the complainant shall provide the complainant with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.* The notification sent by the SEA complaint officer to the LEA shall include:

- a. A copy of the complaint;
- b. An offer of technical assistance in resolving the complaint; and
- c. Request for [written] response to the complaint within 10 administrative days of the date receipt of the letter or notification.

5. If a reply from the LEA is not filed with the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee within 10 administrative days of the receipt of the notice, then the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall send a second notice to the LEA advising that failure to respond within seven administrative days of the date of such notice will result in ~~the complaint being transmitted to review~~ by the Superintendent of Public Instruction for action regarding appropriate sanctions.

6. The ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall take action with respect to the response as follows:

- a. Review the complaint and reply filed by the LEA to determine if further investigation or corrective

action needs to be taken. If no further investigation or action is necessary, then the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee shall notify both parties, in writing, stating the grounds for such finding.

b. Conduct an investigation of the complaint which shall include a complete review of all relevant documentation presented and may include an independent on-site investigation, if necessary.

c. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards.

d. Make a determination of compliance or noncompliance based upon the facts and applicable law and notify the parties, in writing, of the findings and the bases for such findings. A time limit of 60 calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the [~~complaints~~ complaint]. An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the ~~SEA complaint officer~~ Superintendent of Public Instruction or designee whenever exceptional circumstances exist and specify the extended time limit.

e. Report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.

~~7. The party designated by the Superintendent of Public Instruction shall report recommendations for action to the Superintendent of Public Instruction for all complaints received from the SEA complaint officer.~~

~~8. The Superintendent of Public Instruction shall take formal action within five administrative days of receiving recommendations from the party designated by the Superintendent of Public Instruction or the SEA complaint officer and~~

~~7. The Superintendent of Public Instruction or designee will notify the parties in writing of such any needed corrective actions and the specific steps which must be taken by the LEA to bring it into compliance. The LEA will be given 15 administrative days from the date of notice of noncompliance to respond and initiate voluntary corrective action.~~

~~9. 8. Where the LEA develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 administrative~~

days. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the SEA.

~~10.~~ 9. If the LEA does not come into compliance within the period of time set forth in the notification, then the matter will be referred by the Superintendent of Public Instruction to the Board of Education for a hearing.

~~11.~~ 10. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then he shall issue a decision in writing stating that state and federal funds for the education of ~~handicapped~~ children with disabilities shall not be made available to that LEA until there is no longer any failure to comply with the applicable law or regulation.

~~12.~~ 11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision of the Superintendent of Public Instruction .

§ 3.6: § 3.5. Requirements for establishing surrogate parent procedures for ~~local school divisions~~ LEAs and applicable state agencies and institutions.

A. Role of surrogate parent.

The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of ~~being~~ having , or is determined to be have , ~~handicapped~~ a disability . State and federal regulations require that the surrogate parent represent the child in all matters relating to:

1. The identification, evaluation, or educational placement of the child; or
2. The provision of a free appropriate public education to the child.

B. Appointment of surrogate parents.

1. Children (ages two to 21, inclusive) who are suspected of being or determined to be ~~handicapped~~ have disabilities , whose natural parent(s) or guardian(s) have allowed relatives or private individuals to act as parents to the child, do not require a surrogate parent.

A surrogate parent shall be appointed for a child, ages two to 21, inclusive, who is suspected of being having or determined to be ~~handicapped~~ have a disability

when:

a. No parent or person who has been allowed to act as a parent by the natural parent(s) or guardian(s) can be identified;

b. The LEA, after reasonable efforts, cannot discover the location of a parent; or

c. ~~Legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law~~ The child is a ward of the state .

2. Each LEA shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition.

3. Each LEA shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA superintendent or designee.

a. The appointment having been effected , the LEA shall notify in writing:

(1) The ~~handicapped~~ child with a disability (ages two to 21, inclusive), as appropriate to the ~~handicap~~ disability ;

(2) The surrogate parent-appointee;

(3) The person charged with responsibility for the child;

(4) The public agency charged with responsibility for the child, when the child is a ward of the state;

(5) The SEA.

b. LEAs are required to send parents' copy of notice to child's guardian or custodial state agency or both . In instances where the LEA has not been able to locate the present whereabouts of the parent(s), a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement.

c. The surrogate parent shall serve during, or for the duration of, the school year for which he is appointed.

(1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document.

(2) Should a child require the services of a surrogate parent during the summer months, the

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LEA shall extend the appointment as needed, consistent with timelines required by law.

d. At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.

4. Each LEA shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows:

a. The child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship);

b. The child is found no longer eligible for special education services (except when termination of special education services is being contested);

c. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent;

d. A parent, who was previously unknown or unavailable, is now known or available; or

e. The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent").

C. Identification and recruitment of surrogate parents.

1. The LEA shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for LEAs to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the ~~surrogate parent/handicapped child~~ relationship *between the child with a disability and the surrogate parent*.

2. Individuals who are not on the LEA list may be eligible to serve as surrogate parents, subject to the LEA's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the LEA's determination of surrogate eligibility. Other factors which warrant the LEA's attention are as follows:

a. Consideration of the appointment of a relative to serve as surrogate parent;

b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately;

c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of ~~being~~ *having* or has been identified as ~~being handicapped~~ *having a disability*; and

d. The appropriateness of the child's participation in the selection of his surrogate parent.

D. Qualifications of surrogate parents.

Each LEA shall ensure that a person appointed a surrogate:

1. Has no interest that conflicts with the interest of the child he represents;

2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed an SEA approved training session prior to representing the child. The LEA shall provide training, at least annually, for surrogate parents to ensure that they possess knowledge of special education and related services for ~~handicapped~~ *children with disabilities*, as well as knowledge of the legal requirements necessary to represent the child effectively.

3. Is not an employee of a public agency which is involved in the education or care of the child;

4. Is an adult and legal citizen of the United States; and

5. Resides in the same general geographic area as the child, whenever possible.

A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent.

E. Rights of surrogate parents.

The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children determined or suspected to be ~~handicapped~~ *have disabilities*.

§ 3.7. § 3.6. Administration and governance.

A. Plans, applications and reports.

1. Each LEA is required to prepare and submit to the appropriate state authority the following:

a. To the SEA, by such data as the board may specify, acceptable annual special educatio

plan/report and funding applications ~~which that~~ :

(1) Specify plans for providing free appropriate education and related services to all ~~handicapped~~ children *with disabilities* for the following year; and

(2) Report on the extent to which the plan for the preceding year has been implemented.

b. To the SEA, an application for funding under Part B of Public Law 94-142, as amended, or Public Law 89-313, as amended, containing assurances of compliance in accordance with various procedures outlined by the SEA.

2. Each LEA shall include the following provisions and assurances in the annual special education plan/report and funding applications:

a. A free appropriate public education will be available for each ~~handicapped~~ child *with a disability*, ages two to 21, inclusive.

b. All children, ages two to 21, inclusive, residing in the LEA who are ~~handicapped~~ *have disabilities* and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program.

c. ~~Handicapped~~ Children *with disabilities* and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education.

d. To the maximum extent appropriate, ~~handicapped~~ children *with disabilities* will be educated with children who are ~~not handicapped~~ *nondisabled*.

e. Confidential records of ~~handicapped~~ children *with disabilities* shall be properly maintained.

f. Testing and evaluative materials used for the purpose of classifying and placing ~~handicapped~~ children *with disabilities* are selected and administered so as not to be racially or culturally discriminatory.

g. An individualized education program will be maintained for each ~~handicapped~~ child *with a disability*.

h. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of the ~~handicapped~~ children *with disabilities* is provided.

i. There will be ongoing parent consultation.

j. A full educational opportunity goal is provided for

all ~~handicapped~~ children *with disabilities*, from birth to age 21, inclusive, including appropriate career education, prevocational education, and vocational education.

k. ~~Handicapped~~ children *Children with disabilities* must be given the right of participating in the Literacy Testing Program (LTP).

~~3. Each LEA shall make the plan, application, and all related documents available to parents and the general public at least 30 calendar days before adoption by the local school board or appropriate authorities. Such notice shall be published or announced in newspapers and other media and procedures shall be established to provide individuals an opportunity to respond to these documents.~~

~~4. 3. Each LEA shall also ensure that all required special education plans, applications, reports, and program evaluations are public information available for public inspection.~~

B. Personnel development.

Each LEA shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development which shall include:

1. In-service training for all general and special education instructional, related services, and support personnel; and

2. Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to ~~handicapped~~ children *with disabilities* are properly certified and endorsed.

C. Local advisory committee.

~~1. There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities.~~

~~[2. 1. Local school division personnel shall serve only as consultants to the committee.]~~

~~3. Parents of handicapped children and youth shall serve on the local advisory committee.~~

~~[4. 2. The functions of the local advisory committee shall be as follows:~~

~~a. Advise the local school division of unmet needs in the education of handicapped children with disabilities ;~~

~~b. Assist the local school division in the formulation and development of long-range plans designed to~~

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provide needed educational services for ~~handicapped~~ children with disabilities ;

c. Participate in the development of priorities and strategies for meeting the identified needs of ~~handicapped~~ children with disabilities ;

d. Submit periodic reports and recommendations regarding the education of ~~handicapped~~ children with disabilities to the division superintendent for transmission to the local school board; and

e. Assist the local school division in interpreting plans to the community for meeting the special needs of ~~handicapped~~ children with disabilities for educational services.]

[~~5.~~ 3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee.]

[~~6.~~ 4. Committee meetings shall be held at least quarterly and shall be open to the public.]

~~7.~~ Public notice of each meeting shall be made at least two weeks prior to the date of the meeting.

~~8.~~ One meeting shall be designated specifically for the review of the annual special education plan/report and funding applications 30 calendar days prior to submission to the local school board.

[~~5.~~ One meeting shall be designated specifically for the review of the annual special education plan/report and funding applications prior to submission to the local school board.]

D. Regional programs.

1. Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve their ~~handicapped~~ children with disabilities , such regional programs shall be provided in accordance with least restrictive environment requirements.

2. Where local school divisions LEAs elect to participate in 60% reimbursements of costs established under the rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections an approved regional program for the provision of special education and related services for certain ~~handicapped~~ children with disabilities , a joint board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the joint board, and administration of the jointly operated program shall be conducted in accordance with the Board of Education regulations

governing such programs.

3. The annual special education plan/report and funding applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each joint board may submit a composite annual special education plan/report and funding applications which is composed of excerpts from each of the participating LEAs.

4. Each joint board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.

PART IV. FUNDING.

§ 4.1. Reimbursement to local school divisions LEAs and state-operated programs.

A. State and federal funds administered by the SEA are disbursed to local school divisions LEAs and state-operated programs in accordance with the following requirements:

1. Compliance with regulations of the Board of Education including those for accreditation ;

2. Education programs for the ~~handicapped~~ children with disabilities shall be operated pursuant to an approved annual special education plan/report and funding applications;

3. Special education teachers, [~~speech~~ speech-language] pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education [~~certification licensure~~] and endorsement requirements for such employment;

~~4.~~ Class enrollments and case loads shall not exceed the maximum number of ~~handicapped~~ children as prescribed by special education program requirements;

~~5.~~ Where unusual or extenuating circumstances exist, the LEA may apply to the Superintendent of Public Instruction for a waiver of certain regulations relating to certification, endorsement and program modification. All such requests shall be in writing and include documentation of the LEA's attempt to achieve compliance, shall state the rationale for requesting the waiver, and shall specify the corrective action to be taken to achieve compliance by the beginning of the next school year;

~~6.~~ 4. All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement will be prorated accordingly may be prorated pursuant to provisions of the appropriation

act .

§ 4.2. State funds.

A. State funds to assist local school divisions with the cost of providing special education and related services for ~~handicapped~~ children with disabilities are provided through the SEA's appropriation as follows:

1. ~~Handicapped~~ Children with disabilities enrolled in programs operated by a local school board:

a. Day school programs. In addition to the funds received for each pupil from basic aid, ~~local school divisions~~ LEAs will receive payment to support the state share of the number of special education teachers and aides required by the Standards of Quality.

b. Homebound instruction. ~~Local school divisions~~ LEAs shall be reimbursed 60% of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60% of an established hourly rate determined annually by the department, and shall be in addition to basic aid.

c. Transportation. ~~Handicapped~~ Children with disabilities, ages two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools pursuant to their IEPs are funded in accordance with pupil transportation regulations.

2. ~~Handicapped~~ Children with disabilities enrolled in regional special education programs:

a. Reimbursement is available for ~~60%~~ a portion of the tuition costs not to exceed 60% of the maximum rate established under the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections for based on the local composite index computed at 60%. Rates will be approved following procedures established by the Board of Education. Regional special education programs operated by a joint board, or for LEAs operating a residential program accepting eligible ~~handicapped~~ children with disabilities from other local school division(s) who are have :

- (1) Severely and profoundly ~~handicapped~~, A severe and profound disability.
- (2) Seriously emotionally disturbed, A serious emotional disturbance.
- (3) Autistic, Autism.

(4) ~~Multihandicapped~~, Multiple disabilities.

(5) ~~Deaf~~, Deafness.

(6) ~~Hard of hearing~~, or A hearing impairment.

(7) ~~Deaf-blind~~, Deaf-blindness.

(8) A traumatic brain injury.

b. Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.

3. ~~Handicapped~~ [Children with disabilities enrolled in approved private nonsectarian schools for] the ~~handicapped~~ [children with disabilities shall be funded under the provisions of the Funds under the] Comprehensive Services Act for At-Risk [Children Youth] and Families :

a. Reimbursement for 60% of the tuition cost, not to exceed 60% of the maximum rate established by the Board of Education, is available for special education and related services for eligible ~~handicapped~~ children attending private nonsectarian schools approved under the Rules of the Interdepartmental Committee on Rate-Setting: The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections. The maximum rate set by the board for any facility may be appealed to the Interdepartmental Committee on Rate-Setting for Children's Facility.

b. When the LEA is unable to provide an appropriate educational program for a ~~handicapped~~ child, and determines that the appropriate placement for the child is in an approved private nonsectarian school for the ~~handicapped~~, the LEA is responsible for the cost of the placement.

e. When the local departments of social services or the Department of Corrections places a ~~handicapped~~ child in an approved private residential nonsectarian school for the ~~handicapped~~ for reasons other than educational purposes, the LEA shall be responsible for payment of appropriate educational costs. Such costs are reimbursable from the SEA.

d. [1. Reimbursement for] ~~handicapped~~ [children with disabilities placed in foster care shall be made in accordance with procedures established by the SEA.]

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e. [2. When a parent unilaterally places a] handicapped [child with a disability in an approved private nonsectarian school for] the handicapped [children with disabilities ; the LEA shall not be responsible for the cost of the placement unless a hearing officer, or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA, is appropriate and no appeal is perfected from that decision.]

[a. Funds are available under the Comprehensive Services Act for At-Risk Youth and Families to support the state's share of costs for children with disabilities whose IEPs call for private day or private residential placement, or other purchased services, under the provisions of the Comprehensive Services Act.

b. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the LEA shall not be responsible for the cost of the placement. If a hearing officer or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA, is appropriate and no appeal is perfected from that decision, the LEA is responsible for placement and funds are available under the Comprehensive Services Act to support the state's share of costs.

4. Reimbursement for children with disabilities placed in foster care shall be made in accordance with procedures established by the SEA.]

4. Training of special education personnel: Traineeship loans are available to persons who are interested in working with programs for the education of handicapped children to qualify them as special education personnel in the LEAs, as special education teachers, special education supervisors, visiting teachers, school social workers, school psychologists, or speech pathologists. Applicants for such traineeships shall be graduates of a recognized college or university and must meet eligibility requirements set by the Board of Education.

§ 4.3. Federal funds.

A. Federal funds are available under Part B of Public Law 94-142, as amended, to assist local school divisions with the excess cost of providing special education and related services for handicapped children with disabilities ages two to 21, inclusive. The application for such funds is submitted to the SEA according to applicable federal requirements.

B. In order to qualify for Part B funds, a local school division LEA must spend as much in state and local funds on elementary handicapped children with disabilities as on elementary nonhandicapped nondisabled children, and as much on secondary handicapped children with disabilities

as on secondary nonhandicapped nondisabled children.

C. Part B funds may not be used to supplant state and local expenditures for special education and related services.

D. The entitlement of Part B funds for each local school division LEA is based upon the unduplicated number of handicapped children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year.

E. Handicapped Children with disabilities transferred from state operated programs to local school divisions LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended. However, no child included in the count for Public Law 94-142, as amended, is eligible to be counted for funding under Public Law 89-313, as amended.

§ 4.4. Funds to assist with the education of handicapped children with disabilities residing in state-operated facilities are available as follows:

A. Children in state mental health facilities.

State funds for special education and related services for children in state mental health facilities are appropriated to the Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

B. Children in state training centers for the mentally retarded.

State funds for special education and related services for children in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Department of Education from the local school division's basic aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.

C. Children in short-term [state medical facilities specialized children's hospitals].

State funds are provided for special education and related services in the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.

D. Children in Woodrow Wilson Rehabilitation Center.

State funds for special education and related services are derived from the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.

E. Children in regional juvenile detention homes.

State funds for special education services are available from the special education appropriation.

F. State-operated diagnostic clinics.

State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the state Health Department of Health are derived from the special education appropriation.

G. Virginia Department of Correctional Education.

State funds for the education of children, including ~~handicapped~~ children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated correctional facilities. Federal funds are available under the provisions of Public Law 94-142, as amended.

§ 4.5. Funding, withholding, and recovery of funds.

A. The SEA shall disburse funds to LEAs for the education of ~~handicapped~~ children with disabilities (ages two to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations.

B. Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA that state and federal funds will not be available for reimbursement for special education programs and services.

1. The notification shall include the substance of the alleged violation, and the LEA shall be given an opportunity to submit a written response; and

2. The LEA shall have the right to appeal to the Board of Education under § 4.6 of this part.

C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under § 4.6 of this part, finds that an LEA has failed to comply with the Board of Education regulations and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of ~~handicapped~~ children with disabilities shall not be made available to that LEA until it complies with the Board of Education regulations.

D. Where there is evidence that a child has been

erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA, the foregoing due process procedures shall apply.

E. Where it is determined that such funds have been erroneously claimed, the SEA shall bill the LEA for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.

§ 4.6. Appeal of administrative decision.

A. The SEA recommendation to disapprove an LEA annual special education plan/report and funding applications or to withhold special education funds may be appealed by an LEA.

B. The procedures for the appeal of administrative decisions are as follows:

1. The LEA must request, in writing, a hearing by the SEA within 30 administrative working days from the receipt of notification from the Superintendent of Public Instruction;

2. Within 10 administrative working days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA in writing of the date, time and location of the hearing;

3. The hearing shall transpire within 15 administrative working days from the date of notification;

4. The hearing board shall be composed of the following persons:

a. Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and

b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee;

5. Witnesses and attorneys may be present and testify for the SEA or the LEA;

6. A written or electronic verbatim record shall be kept of all proceedings of the hearing;

7. The hearing board shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will render a decision; and

8. The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court.

PART V.

Final Regulations

ADDITIONAL RESPONSIBILITIES OF STATE BOARDS, AGENCIES, AND INSTITUTIONS FOR EDUCATION AND TRAINING OF HANDICAPPED CHILDREN AND YOUTH WITH DISABILITIES IN RESIDENCE OR CUSTODY.

§ 5.1. *Provision of special education to children with disabilities in residence or custody.*

Each state board, agency, and institution having ~~handicapped~~ children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Board of Education. The procedures outlined in Part III, Responsibilities of ~~Local School Divisions~~ LEAs and State Agencies, of these regulations are applicable to each state board, agency and institution having ~~handicapped~~ children and youth with disabilities in residence and custody.

§ 5.2. *Annual plan.*

Each state board, agency, and institution having responsibility for providing such education and training shall submit annually to the SEA for approval by the Board of Education its program plan for the education and training for ~~handicapped~~ children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Board of Education, shall include the provisions and assurances as specified in § ~~3.7~~ § 3.6 of these regulations. In addition, the program plan shall include the following:

1. The educational objectives of the state board, agency, or institution ; .
2. Strategies for achieving the educational objectives, including an organized program for staff development ; .
3. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objective(s) ; .
4. A system of communication to assure service continuity in the transition of the student into and out of the educational program of the facility ; .
5. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation ; .
6. A system of communication between the state board, agency, or institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner in matters of concern to them ; .
7. A cooperatively developed procedure for the evaluation of educational personnel ; .

8. The grievance procedures regarding educational personnel as prescribed by the state or the appropriate local agency or board ; .

9. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the educational needs of children and youth in residence is provided ; .

10. At least 5-1/2 hours of education/training per school day or 27-1/2 [hours] per school week is available for each student to implement his IEP.

11. A waiver statement is on file for each student whose medical or physical condition requires modification of the school schedule. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and there shall be on file statements of concurrence by the principal, supervisor or educational director and other personnel as follows:

- a. ~~Mental health and mental retardation~~ Department of Mental Health, Mental Retardation and Substance Abuse [Services] facilities - attending physician;
- b. Department of Correctional Education - treatment team;
- c. School for the deaf and the blind - physician, staffing committee and principal;
- d. Woodrow Wilson Rehabilitation Center - center counselor upon recommendation of the staffing committee;
- e. State medical facilities - attending physician(s);
- f. Juvenile detention homes - detention superintendent or designee.

12. Each state school for the deaf and [the] blind shall provide a planned dormitory and a student-life program for each age group of children, including social and daily living skills, recreation, and cultural activities.

§ 5.3. *Staff and facility.*

A. Each state board, agency or institution shall assign personnel to the educational program as follows:

1. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements).

2. Additional education personnel to provide required related services as delineated in the IEP.

3. Teacher aids must be high school graduates or equivalent.

B. Each state board, agency or institution shall staff the educational program as follows:

1. A principal, supervisor, education director or lead teacher for the educational program provided at each school [; and or] institution ~~and except for juvenile detention home homes [which must have a principal]~~.

2. Instructional personnel sufficient to maintain pupil-teacher ratios not to exceed the following:

a. ~~Seriously emotionally disturbed~~ *Serious emotional disturbance* - one teacher for every eight children or one teacher and one aide for every 10 children;

b. ~~Hard of hearing/deaf~~ *Hearing impairment/deafness* - one teacher for every seven children with one aide for every three classroom teachers;

c. ~~Mentally retarded~~ *Mental retardation* - one teacher and one aide for every 10 children;

d. ~~Severely and profoundly handicapped~~ *Severe and profound disability* - one teacher and one aide for every six children or one teacher and two aides for every 10 children;

e. ~~Visually impaired~~ *Visual impairment* - one teacher for every seven children with one aide for every three classroom teachers;

f. ~~Other health impaired~~ *impairment* - one teacher for every eight children or one teacher and one aide for every 10 children;

g. ~~Orthopedically impaired~~ *Orthopedic impairment* - one teacher for every eight children or one teacher and one aide for every 10 children;

h. ~~Specific learning disabled~~ *disability* - one teacher for every eight children or one teacher and one aide for every 10 children;

i. ~~Multihandicapped/deaf-blind~~ *Multiple disabilities/deaf-blindness* - one teacher and one aide for every six students or one teacher and two aides for every 10 students;

[j. *Autism - 1 teacher for every 6 students or 1 teacher and 1 aide for every 8 students;*]

[j. k.] Department of Correctional Education - no greater than an average of one teacher and one

aide for every 10 children;

[k. l.] Woodrow Wilson Rehabilitation Center - no greater than an average of one teacher for every 10 children;

[l. ~~Other administrative supervisory, instructional, support and ancillary personnel at each state school for the deaf and blind at least in the ratio required by Board of Education accreditation standards;~~]

m. Juvenile detention homes - a student/teacher ratio shall be based on the bed capacity of the detention home: one teacher per 12 beds. Where unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification.

C. Each facility shall have available adequate and appropriate classroom space, library, and instructional materials and supplies to meet the educational needs of the children.

§ 5.4. Evaluation.

Each state board, agency, or institution shall ensure an ~~annual evaluation of the educational program to determine the extent to which the objectives have been achieved and to make recommendations for program modification of such plan.~~

PART VI. COMPLIANCE WITH § 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED.

§ 6.1. For those public elementary or secondary education programs operated by the Virginia Department of Education, the department shall:

1. Develop an individualized education program for each person who is handicapped as defined by the Rehabilitation Act of 1973 and its amendments; and

2. Utilize the system of procedural safeguards specified in these regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.

§ 6.2. Local education agencies, as defined by these regulations, other than the Virginia Department of Education, may utilize the ~~system of procedural safeguards due process hearing system~~ specified in these regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.

V.A.R. Doc. No. R94-252; Filed November 10, 1993, 10:43 a.m.

Final Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: The following regulations are excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: State Plan for Medical Assistance Relating to Omnibus Technical Amendment.

VR 460-01-11. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1(b)).

VR 460-01-57. Payment for Services (§ 4.19(a)).

VR 460-01-58:1. Payment for Services (§ 4.19(b)).

VR 460-01-79.8. Required Coordination Between the Medicaid and WIC Programs (§ 4.37).

VR 460-01-88. Maintenance of AFDC Efforts (§ 7.3).

VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

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

Effective Date: December 29, 1993.

Summary:

The purpose of this action is to incorporate into the Plan for Medical Assistance new preprinted pages issued by HCFA containing existing policies.

The sections of the State Plan affected by this action are: § 2, Coverage and Eligibility; § 4.19, Payment for Services; § 4.37, Required Coordination Between the Medicaid and WIC Programs; § 7, General Provisions; Attachment 3.1-A, Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy. The content of each of these pages is discussed as follows:

Section 2, Coverage and Eligibility, allows for the Commonwealth to provide pregnant women with ambulatory prenatal care during a period of presumptive eligibility. Since the Commonwealth has never elected to provide this eligible group with presumptive eligibility (as shown in Attachment 2.2-A), it was not necessary to indicate the provision of ambulatory prenatal care. Additionally, the Commonwealth does not elect either of the two options under HMO risk contracts because there are no health maintenance organizations enrolled as Medicaid providers.

Section 4.19, Payment for Services: DMAS has always paid for federally mandated inpatient hospital services

which are reasonable and medically necessary for the diagnosis and treatment of an illness or injury or to improve the functioning of a malformed body member. The services must be consistent with the diagnosis or treatment of the patient's condition and must be rendered in accordance with standards of good medical practice to be considered medically necessary. Inpatient care which does not contribute meaningfully to the treatment of an illness or injury or to the functioning of a malformed body member is not covered. HCFA is now requiring the states to indicate, in their Plans, whether or not they cover inappropriate levels of care. Therefore, DMAS has indicated that inappropriate level of care days are not covered.

HCFA issued revised preprinted page 58 in Program Memorandum 93-6. The revision concerns the reference to the new Supplement 1 containing the methods and standards for establishing payments for Medicaid Parts A and B deductible/coinsurance. DMAS places its required obstetric/pediatric fees in Supplement 1 so this new supplement from HCFA is renumbered as number 2.

Section 4.37, Required Coordination Between the Medicaid and WIC Programs, requires the coordination of services between the Medicaid program and the Special Supplemental Food Program for Women, Infants, and Children (WIC). DMAS implemented this policy operationally when it became effective in § 6406 of the Omnibus Budget Reconciliation Act of 1989 (P.L. 101-239), before HCFA required its inclusion in the State Plan. Submission of this page HCFA will conform the Plan to this federal requirement.

Section 7, General Provisions. There is a provision in federal law which prohibits states from reducing their Aid to Families with Dependent Children (or in Virginia ADC) payments below the level on May 1, 1988. The Commonwealth has not reduced its payments and is, by submitting this required preprinted page, indicating to HCFA its compliance with federal law.

Attachment 3.1-A, Amount, Duration, and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy, provides for the coverage of services by pediatric and family nurse practitioners. These are defined as those services which constitute the practice of medicine according to protocols which are jointly developed by the physician and nurse practitioner. Such protocols must delineate and direct the procedures to be followed and the delegated medical acts appropriate to the specialty practice area to be performed by the nurse practitioner in the care and medical management of patients. Prior to the distribution of this new preprinted page, indication of the coverage of these providers has not been a required item for inclusion in the State Plan.

Page 9 of Attachment 3.1 A provides an assortment of different services consistent with the substance of the Code of Federal Regulations § 440.170. HCFA revised this page for the purpose of renumbering the included items. The policies contained on this page are the same as contained in the currently approved State Plan.

VR 460-01-11. Application, Determination of Eligibility and Furnishing Medicaid (§ 2.1 (b)).

Citation: 42 CFR 435.914, 1902(a)(34) of the Act

2.1(b) (1) Except as provided in § 2.1(b)(2) and (3) below, individuals are entitled to Medicare Medicaid services under the plan during the three months preceding the month of application, if they were, or on application would have been, eligible. The effective date of prospective and retroactive eligibility is specified in Attachment 2.6-A.

Citation: 1902(e)(8) and 1905(a) of the Act

(2) For individuals who are eligible for Medicaid cost-sharing expenses as qualified Medicare beneficiaries under § 1902(a)(10)(E)(i) of the Act, coverage is available for services furnished after the end of the month in which the individual is first determined to be a qualified Medicare beneficiary. Attachment 2.6-A specifies the requirements for determination of eligibility for this group.

Citation: 1902(a)(47) and 1920 of the Act

(3) Pregnant women are entitled to ambulatory prenatal care under the plan during a presumptive eligibility period in accordance with § 1920 of the Act. Attachment 2.6-A specifies the requirements for determination of eligibility for this group.

Citation: 42 CFR 434.20

2.1(c) The Medicaid agency elects to enter into a risk contract with an HMO that is:

Qualified under Title XIII of the Public Health Service Act or is provisionally qualified as an HMO pursuant to § 1903(m)(3) of the Social Security Act.

Not federally qualified, but meets the requirements of 42 CFR 434.20(c) and is defined in Attachment 2.1-A.

Not applicable.

VR 460-01-57. Payment for Services (§ 4.19(a)).

Citation: 42 CFR 447.252, 1902(a)(13) and 1923 of the Act.

§ 4.19. Payment for services.

(a) The Medicaid agency meets the requirements of 42 CFR Part 447, Subpart C, and § 1902(a)(13) and 1923 of the Act with respect to payment for inpatient hospital services.

Attachment 4.19-A describes the methods and standards used to determine rates for payment for inpatient hospital services.

Inappropriate level of care days are covered and are paid under the State Plan at lower rates than other inpatient hospital services, reflecting the level of care actually received, in a manner consistent with § 1861(v)(1)(G) of the Act.

Inappropriate level of care days are not covered.

VR 460-01-58:1 Payment for Services (§ 4.19(b)).

Citation: 42 CFR 447.201, 42 CFR 447.302, 52 FR 28648, 1902(a)(13)(E), 1903(a)(1) and (n), 1920, and 1926 of the Act.

§ 4.19(b). In addition to the services specified in § 4.19(a), (d), (k), (l), and (m), the Medicaid agency meets the following requirements:

(1) Section 1902(a)(13)(E) of the Act regarding payment for services furnished by Federally Qualified Health Centers (FQHCs) under § 1905(a)(2)(C) of the Act. The agency meets the requirements of § 6303 of the State Medicaid Manual (HCFA-Pub. 45-6) regarding payment for FQHC services. Attachment 4.19-B describes the method of payment and how the agency determines the reasonable costs of the services (for example, cost reports, cost or budget review, or sample surveys).

(2) Sections 1902(a)(13)(E) and 1926 of the Act, and 42 CFR Part 447, Subpart D, with respect to payment for all other types of ambulatory services provided by rural health clinics under the Plan.

Attachment 4.19-B describes the methods and standards used for the payment for each of these services except for inpatient hospital, nursing facility services and services in intermediate care facilities for the mentally retarded that are described in other attachments.

Citation: 1902(a)(10) and 1902(a)(30) of the Act.

Supplement 2 to Attachment 4.19-B describes general methods and standards used for establishing payment for Medicare Part A and B deductible/coinsurance.

VR 460-01-79.8. Required Coordination Between the Medicaid and WIC Programs (§ 4.37).

Citation: 1902(a)(11)(C) and 1902(a)(53) of the Act.

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§ 4.37. Required coordination between the Medicaid and WIC Programs.

The Medicaid agency provides for the coordination between the Medicaid program and the Special Supplemental Food Program for Women, Infants, and Children (WIC) and provides timely notice and referral to WIC in accordance with § 1902(a)(53) of the Act.

VR 460-01-88. Maintenance of AFDC Efforts (§ 7.3).

Citation: 1902(c) of the Act.

§ 7.3 Maintenance of AFDC efforts.

The state agency has in effect under its approved AFDC plan payment levels that are equal to or more than the AFDC payment levels in effect on May 1, 1988.

VR 460-02-3.1100. Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy.

1. Inpatient hospital services other than those provided in an institution for mental diseases.

Provided: No limitations With limitations*

2.a. Outpatient hospital services.

Provided: No limitations With limitations*

b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

Provided: No limitations

With limitations* Not provided.

c. Federally qualified health center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).

Provided: No limitations With limitations*

3. Other laboratory and x-ray services.

Provided: No limitations With limitations*

4.a. Skilled nursing facility services (other than services in an institution for mental diseases for individuals 21 years of age or older).

Provided: No limitations With limitations*

b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

Provided: No limitations

In excess of Federal requirements*

Limited to Federal requirements

c. Family planning services and supplies for individuals of child-bearing age. (See Page 5 for Family Planning.)

Provided: With limitations*

Not provided No limitations

5. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere. (See Page 5 for Physician's Services.)

Provided: With limitations*

Not provided No limitations

6. Medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law. (See Page 8 for Other Practitioners.)

a. Podiatrists' Services.

Provided: With limitations*

Not provided No limitations

b. Optometrists' Services.

Provided: With limitations*

Not provided No limitations

c. Chiropractors' Services.

Provided No limitations With limitations*

Not provided

d. Other Practitioner's Services.

Provided (Identified on attached sheet with description of limitations)* Not provided

7. Home health services. (See page 9 for Home Health.)

a. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

Provided No limitations With limitations*

Not provided

b. Home health aide services provided by a home health

- agency.
- Provided No limitations With limitations*
- Not provided
- c. Medical supplies, equipment, and appliances suitable for use in the home.
- Provided No limitations With limitations*
- Not provided
- d. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.
- Provided No limitations With limitations*
- Not provided
8. Private duty nursing services.
- Provided No limitations With limitations*
- Not provided
9. Clinic services. (See Page 10, Clinic Services)
- Provided No limitations With limitations*
- Not provided
10. Dental Services. (See Page 11, Dental Services)
- Provided No limitations With limitations*
- Not provided
11. Physical therapy and related services. (See page 12 for PT and related services.)
- a. Physical therapy.
- Provided No limitations With limitations*
- Not provided
- b. Occupational therapy.
- Provided No limitations With limitations*
- Not provided
- c. Services for individuals with speech, hearing, and language disorders. (Provided by or under supervision of a speech pathologist or audiologist) (See page 12, Physical Therapy and Related Services.)
- Provided No limitations With limitations*
- Not provided
- Not provided
12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist. (See page 13 for Prescribed Drugs and Eyeglasses.)
- a. Prescribed drugs.
- Provided No limitations With limitations*
- Not provided
- b. Dentures.
- Provided No limitations With limitations*
- Not provided
- c. Prosthetic devices.
- Provided No limitations With limitations*
- Not provided
- d. Eyeglasses.
- Provided No limitations With limitations*
- Not provided
13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan. (See page 14 for diagnostic and other services.)
- a. Diagnostic services.
- Provided No limitations With limitations*
- Not provided
- b. Screening services.
- Provided No limitations With limitations*
- Not provided
- c. Preventive services.
- Provided No limitations With limitations*
- Not provided
- d. Rehabilitative services. (See page 9, Home Health Services)
- Provided No limitations With limitations*
- Not provided

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14. Services for individuals age 65 or older in institutions for mental diseases. (See page 15 for IMD services for persons over 65.)
- a. Inpatient hospital services.
- Provided No limitations With limitations*
- Not provided
- b. Skilled nursing facility services.
- Provided No limitations With limitations*
- Not provided
- c. Intermediate care facility.
- Provided No limitations With limitations*
- Not provided
- 15.a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with section 1902(a)(31)(A) of the Act, to be in need of such care.
- Provided No limitations With limitations*
- Not provided.
- b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.
- Provided No limitations With limitations*
- Not provided.
16. Inpatient psychiatric facility services for individuals under 22 years of age.
- Provided No limitations With limitations*
- Not provided.
17. Nurse-midwife services.
- Provided No limitations With limitations*
- Not provided.
18. Hospice care (in accordance with section 1905(o) of the Act).
- Provided No limitations with limitations*
- Not provided.
19. Case management services as defined in, and to the group specified in, Supplement 2 to Attachment 3.1-A
- (in accordance with section 1905(a)(19) or section 1915(g) of the Act)
- Provided With limitations
- Not provided
20. Extended services to pregnant women
- a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.
- Provided † No limitations With limitations*
- b. Services for any other medical conditions that may complicate pregnancy.
- Provided † No limitations With limitations*
- Not provided
21. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider (in accordance with § 1920 of the Act).
- Provided † No limitations With limitations*
- Not provided
22. Respiratory care services (in accordance with § 1902(e)(9)(A) through (C) of the Act).
- Provided † No limitations With limitations*
- Not provided
23. Pediatric or family nurse practitioners' services.
- Provided: Not provided With limitations*
- ~~23.~~ 24. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary.
- a. Transportation
- Provided No limitations With limitations
- Not provided
- b. Services of Christian Science nurses.
- Provided No limitations With limitations
- Not provided
- c. Care and services provided in Christian Science sanatoria.
- Provided No limitations With limitations

Not provided

d. Skilled nursing facility services for patient under 21 years of age.

Provided No limitations With limitations

Not provided

e. Emergency hospital services.

Provided No limitations With limitations

Not provided

f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Provided No limitations With limitations

Not provided

~~24.~~ 25. Private health insurance premiums, coinsurance and deductibles when cost-effective (pursuant to P.L. 101-508 § 4402).

* Descriptions provided on attached sheet. See Supplement 1 to Attachments 3.1 A and 3.1 B.

† List of major categories of services (e.g., inpatient hospital, physician, etc.) that are available as pregnancy-related services, and description of additional coverage of these services, if applicable, provided on attachment.

V.A.R. Doc. No. R94-196; Filed November 2, 1993, 3:28 p.m.

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: VR 460-03-2.6109. Eligibility Conditions and Requirements, Transfer of Resources.

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

Effective Dates: November 2, 1993, through November 1, 1994.

Summary:

1. **REQUEST:** The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Transfer of Assets and Treatment of Certain Trusts. This Transfer of Assets and Treatment of Certain Trusts regulation will implement the requirements of § 13611 of the Omnibus Budget Reconciliation Act of 1993.

2. **RECOMMENDATION:** Recommend approval of the Department's request to take an emergency adoption action regarding Transfer of Assets and Treatment of Certain Trusts. The Department intends to comply with the applicable requirements of the Administrative Process Act (APA) § 9-6.14:1 et seq., for the exemption of certain regulatory actions by state agencies.

/s/ Bruce U. Kozlowski
Director
Date: September 16, 1993

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: September 22, 1993

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: October 31, 1993

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: November 2, 1993

DISCUSSION

6. **BACKGROUND:** The section of the State Plan affected by this action is Supplement 9 to Attachment 2.6-A, Eligibility Conditions and Requirements, Transfer of Resources.

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) amended § 1917(c) and (d) of the Social Security Act. This section describes the provisions of the law regarding how transfers of assets and certain trusts are to be treated

in determining Medicaid eligibility. OBRA 93 made the following mandated changes:

- Increases the look-back period for transfers of assets from 30 to 36 months for most transfers, but to 60 months for transfers accomplished by the creation of trusts;

The present law limits the state from evaluating transfers that occur more than 30 months prior to the date an individual applies for Medicaid and becomes institutionalized. Individuals may transfer assets and wait for 30 months before applying for Medicaid. In these cases the transfer will not affect Medicaid eligibility. The new law increases the look-back period to 36 months for transfers of assets except when the transfer involves a trust. In the latter case, the look-back period is increased to 60 months.

- Requires that multiple transfers be combined for determination of the length of the ineligibility period;

The present law mandates a period of ineligibility beginning with the date of the transfer. Increasingly, applicants are manipulating this provision by transferring large amounts of assets in small installments. By creating numerous small transfers rather than one large transfer, the applicant can significantly reduce the length of any ineligibility periods which must run concurrently. This amendment requires that multiple transfers be combined so that the ineligibility period is computed from the total amount transferred resulting in consecutive ineligibility periods.

- Expands the definition of "assets" to include both income and resources;

The present law affects only transfers of "resources." However, some individuals receive large lump sum payments. According to Medicaid eligibility requirements, such payments are regarded as income in the month during which they are received and as resources if ownership is retained until the next month. Some applicants have transferred substantial funds within the same month. Since this property was regarded as income there was no penalty for such transfers. The new law will treat transfers of income and resources alike and imposes an ineligibility period for transfers of either.

- Defines as a transfer any actions taken by an applicant or anyone acting on his behalf (including a court) to eliminate legal ownership in an asset;

The present law limits transfers to actions taken by the applicant or his spouse. Actions taken by others or by court order are not regarded as a transfer. There are instances in which a third party can institute an action which will change an applicant's ownership of property. This often happens when property is jointly

owned. The new law will close this loophole, to include legal actions taken by others which do not result in fair compensation to the applicant for his legal interest in property.

- Treats the creation of trusts as a transfer of assets and defines trusts to include other similar types of legal devices;

The present law does not preclude the creation of trusts and disregards assets placed in a discretionary trust if the trustee does not make the asset available except in limited instances. The new law expands the countability of income and resources placed in trust and counts, as a transfer of assets, the disposition of an applicant's income or corpus of a trust to any other individual.

- Removes the 30-month cap on the ineligibility period and mandates that the length of ineligibility be open-ended and based upon the uncompensated value of the assets transferred.

The present law imposes a period of ineligibility for Medicaid payment of nursing facility or home and community-based waiver services. The period is determined by dividing the uncompensated value of the property transferred by the average monthly cost of nursing facility services. The quotient derived is the number of months the applicant is ineligible for Medicaid payment of nursing facility or waiver services. However, regardless of the value, the waiting period could not exceed 30 months from the date of transfer. The new law removes the 30 month maximum length of ineligibility. Now the waiting period will have no maximum length.

7. AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in § 32.1-325 that the Board for Medical Assistance Services may, subject to the approval of the Governor, adopt emergency regulations required to conform the State Plan for Medical Assistance with the provisions of federal law. In promulgating such regulations, the Board is not required to comply with the requirements of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

These amendments are necessary to comply with § 1917 (c) and (d) of the Social Security Act as mandated by § 13611 of the Omnibus Budget Reconciliation Act of 1993 enacted on August 11, 1993, and required to be effective with payments for medical assistance made on or after October 1, 1993, for transfers of assets and trusts created on or after the date of enactment. These amendments

shall not apply:

- to medical assistance provided for services furnished before October 1, 1993;
- with respect to assets disposed of on or before August 11, 1993; and
- with respect to trusts established on or before August 11, 1993.

Without an emergency regulation, this amendment to the State Plan cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the October 1, 1993, effective date established by the federal law.

8. FISCAL/BUDGETARY IMPACT: OBRA 93 modifies transfer of assets provisions to provide for a longer look back from application to possible dates of asset transfers, to increase the possible ineligibility period when there are multiple asset transfers, and to provide hardship exceptions for ineligibility. DMAS anticipates that these provisions will significantly modify the practices of people engaged in "estate planning" resulting in a lower incidence of nursing home residents receiving Medicaid payment.

However, several factors mitigate against significant savings in the immediate future:

- The law only affects individuals who transfer property after its passage (August 1993). Thus, the longer look-back period has little impact for two years.
- The nature of the savings (avoiding new nursing home patient enrollment when transfers have occurred) is such that only a few individuals are avoided initially, larger savings occur as enrollment mounts (actually, fails to mount) over time.

Mitigating against savings is the fact that Medicaid projections of utilization growth in nursing homes is very small. Small growth arises because the number of licensed beds is fixed by the number of Certificates of Public Need (COPNs) issued. Few COPNs have been issued since the beginning of a moratorium on new COPNs that began in 1989. At present, fewer than 100 beds authorized by COPNs remain unlicensed. Capacity for nursing home enrollment is close to full. DMAS is, therefore, expecting only minimal growth in enrollment. This capacity limitation should be even more significant in two years (see the first bullet).

- Individuals who transfer property and consequently are ineligible for Medicaid are likely to find it hard to gain admission to relatively full nursing facilities because other Medicaid eligible people may also be attempting to gain access to the same nursing facility beds.

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- Individuals who expend their family's resources in order to wait out the ineligibility period may prefer to use Home for Adult services, where costs are lower. This will leave the nursing facility beds available for use by other individuals who may be Medicaid eligible.

- Where nursing needs are so significant that individuals waiting out ineligibility periods cannot opt to go to a Home for Adults, they may meet the still unspecified hardship criteria.

Based on this analysis, DMAS expects that actual savings from this change in law are likely to be small during the upcoming biennium.

9. RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective for medical assistance payments made on or after October 1, 1993, for services furnished after October 1, 1993, with respect to assets disposed of after August 11, 1993, and with respect to trusts established after August 11, 1993. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to conform to the provisions of the Social Security Act.

10. Approval Sought for VR 460-03-2.1609.

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 32.1-325 to adopt the following regulation:

VR 460-03-2.6109. Eligibility Conditions and Requirements, Transfer of Resources.

Transfers And Trusts After August 11, 1993. The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 11, 1993, and with respect to trusts established after August 11, 1993.

§ 1.0. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

1. by the individual or the individual's spouse,
2. by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse, or
3. by any person, including any court or administrative body, acting at the direction or upon

the request of the individual or the individual's spouse.

"Income" has the meaning given such term in section 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in section 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in section 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

§ 2.0. Transfer of Assets Rule. An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in § 2.2 shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

§ 2.1. Period of Ineligibility. The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:

A. the total, cumulative uncompensated value of all assets transferred as defined in § 1.0 on or after the look-back date specified in § 2.2, by

B. the average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

§ 2.2. Look-Back Date. The look-back date is a date that is 36 months (or, 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or Section 3,) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

§ 2.3. Exceptions. An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

A. The assets transferred were a home and title to the home was transferred to:

1. the spouse of the individual;

2. a child of the individual who is under age 21, or is blind or disabled as defined in section 1614 of the Social Security Act,

3. a sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual, or

4. a son or daughter of the individual (other than a child described in clause (b)) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

B. The assets:

1. were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse,

2. were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

3. were transferred to the individual's child who is under age 21 or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in § 3.7) established solely for the benefit of such child, or

4. were transferred to a trust (including a trust described in § 3.7) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in section 1614(a)(3) of the Social Security Act.

C. A satisfactory showing is made that:

1. the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, or

2. the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or

3. all assets transferred for less than fair market value have been returned to the individual, or

4. the Commonwealth determines that the denial of eligibility would work an undue hardship.

§ 2.4. *Assets Held In Common With Another Person.* In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under State law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when

any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

§ 2.5. *Transfers by Both Spouses.* In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

§ 3.0. *For Trust(s) Created After August 11, 1993.* For purposes of determining an individual's eligibility for, or amount of, medical assistance benefits, subject to § 3.7, these rules shall apply.

§ 3.1. *Trust(s) Defined.* The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of § 1917(c) or (d) of the Social Security Act.

§ 3.2. *Creation of Trust(s) Defined.* For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:

A. The individual,

B. The individual's spouse,

C. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse,

D. A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

§ 3.3. *Proportional Interest In Trust(s).* In the case of a trust(s) the corpus of which includes assets of an individual (as determined under § 3.2) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

§ 3.4. *Trust(s) Affected.* Subject to § 3.7, this section shall apply without regard to:

A. The purposes for which a trust(s) is established,

B. Whether the trustee(s) has or exercises any discretion under the trust(s),

C. Any restrictions on when or whether distributions may be made from the trust(s), or

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D. Any restrictions on the use of distributions from the trust(s).

§ 3.5. Revocable Trust(s). In the case of a revocable trust(s),

A. The corpus of the trust(s) shall be considered resources available to the individual,

B. Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual, and

C. Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of § 2.0.

§ 3.6. Irrevocable Trust(s). In the case of irrevocable trust(s),

A. if there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:

1. to or for the benefit of the individual, shall be considered income of the individual, and

2. for any other purpose, shall be considered a transfer of assets by the individual subject to § 2, and

B. any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of § 2, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

§ 3.7. Exceptions. This section shall not apply to any of the following trust(s):

A. A trust(s) containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3) of the Social Security Act) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.

B. A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3) of the Social Security Act) that meets all of the following conditions:

1. The trust(s) is established and managed by a non-profit association,

2. A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts.

3. Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

4. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

V.A.R. Doc. No. R94-195; Filed November 2, 1993, 3:19 p.m.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

November 5, 1993

..... Administrative Letter 1993 - 19

TO: All Companies Authorized to Write Accident and Sickness Insurance Coverages

RE: INSURANCE REGULATION NO. 15 (REVISED): Rules Establishing Minimum Reserve Standards for Individual and Group Accident and Sickness Insurance Contracts

The Commission has approved a new regulation (Regulation No. 15, revised) containing rules establishing minimum reserve standards for individual and group accident and sickness insurance contracts. A copy of the regulation is enclosed. Effective January 1, 1994, these rules shall replace the Commission's Rules Governing Reserve Standards for Accident and Sickness Insurance Policies which were issued as Insurance Regulation No. 15 and adopted by the Commission in 1979.

The purpose of this administrative letter is to alert accident and sickness insurers generally to the existence of the revised rules and to address certain conditions under which an insurer may be permitted to use its own experience as a basis for establishing its reserves.

Pursuant to the general provisions in Section 3 of the revised regulation, the standards shall apply to all individual and group accident and sickness insurance coverages, except credit accident and sickness insurance coverages, provided by policies or contracts delivered or issued for delivery by any domestic, foreign or alien company licensed to transact the business of insurance in this Commonwealth.

Multiple portions of the revised regulation address the ability of a company to establish contract and claim reserves that are based on the company's experience. Section 4.B specifically recognizes circumstances under which a company's experience with disability income claims may be used to determine minimum reserve standards with respect to morbidity. The rules require that the experience be credible initially. The experience should qualify also for continued recognition as an appropriate basis for determining reserve amounts.

For example, with respect to claim reserves,

1. For experience to be considered credible, the company should be able to provide claim termination patterns over no more than six (6) years reflecting at least 5,000 claims terminations during the third through fifth claims durations on reasonably similar applicable policy forms, and
2. For such reserves to reflect "sound values" and/or reasonable margins, reserve tables based on credible experience should be adjusted regularly to maintain

reasonable margins. Demonstrations may be required by the Commission based on published literature. An acceptable example appears in R. Goldman ("Pricing and Underwriting Group Disability Income Coverages"), Transactions of the Society of Actuaries, Volume XLII, pages 171-230.

The guidelines announced in this letter may be applied by the Commission whenever questions are raised under Regulation No. 15 (revised) concerning the credibility of experience relied upon by a company.

Questions concerning the regulation or this administrative letter should be addressed in writing to:

Douglas C. Stolte, Chief Examiner
Financial Regulation Division
State Corporation Commission Bureau of Insurance
P. O. Box 1157
Richmond, VA 23209

/s/ Steven T. Foster
Commissioner of Insurance

VA. R. Doc. No. R94-226; Filed November 9, 1993, 11:19 a.m.

.....AT RICHMOND, OCTOBER 22, 1993

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

..... CASE NO. INS930382

Ex Parte:

In the matter of
adopting revised Rules Establishing
Minimum Reserve Standards for
Individual and Group Accident
and Sickness Insurance Contracts

ORDER ADOPTING REGULATION

WHEREAS, by order entered herein August 4, 1993, the Commission ordered that a hearing be held in the Commission's Courtroom on October 21, 1993, for the purpose of considering the adoption of a regulation proposed by the Bureau of Insurance ("Bureau") entitled "Rules Establishing Minimum Reserve Standards for Individual and Group Accident and Sickness Insurance Contracts";

WHEREAS, the Commission conducted the aforesaid hearing where the Bureau appeared, by counsel, and recommended one substantive and several technical changes to the regulation and no interested party appeared to comment on the proposed regulation; and

THE COMMISSION, having considered the record herein

State Corporation Commission

and the recommendations of the Bureau, is of the opinion that the regulation should be adopted, as amended;

THEREFORE, IT IS ORDERED that the regulation entitled "Rules Establishing Minimum Reserve Standards for Individual and Group Accident and Sickness Insurance Contracts" which is attached hereto and made a part hereof should be, and it is hereby, ADOPTED to be effective January 1, 1994.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Alfred W. Gross, who shall forthwith give further notice of the adoption of the regulation by mailing a copy of this order together with a copy of the regulation to all insurance companies licensed to write life insurance or accident and sickness insurance in the Commonwealth of Virginia.

Section 1. Purpose

The purpose of this regulation is to set forth rules governing Reserve Standards for accident and sickness insurance policies which the Commission deems necessary to carry out the provisions of Sections 38.2-1311 and 38.2-1314 of the Code of Virginia.

Section 2. Authority

This regulation is promulgated and adopted pursuant to and in accordance with the provisions of §§ 12.1-13, 38.2-223, 38.2-1311 and 38.2-1314 of the Code of Virginia.

Section 3. General

A. Scope

(1) These standards apply to all individual and group accident and sickness insurance coverages, except credit accident and sickness insurance coverages, provided by policies or contracts delivered or issued for delivery by any domestic, foreign or alien company licensed to transact the business of insurance in this Commonwealth.

(2) When a company determines that adequacy of its accident and sickness insurance reserves requires reserves in excess of the minimum standards specified herein, such increased reserves shall be held and shall be considered the minimum reserves for that company.

(3) With respect to any block of contracts, or with respect to a company's accident and sickness business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. Such a gross premium valuation will take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of: all expected benefits unpaid, all expected

expenses unpaid, and all unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect.

Such a gross premium valuation is to be performed whenever a significant doubt exists as to reserve adequacy with respect to any major block of contracts, or with respect to the company's accident and sickness business as a whole. In the event inadequacy is found to exist, immediate loss recognition shall be made and the reserves restored to adequacy. Adequate reserves (inclusive of claim, premium and contract reserves, if any) shall be held with respect to all contracts, regardless of whether contract reserves are required for such contracts under these standards. Whenever minimum reserves, as defined in these standards, exceed reserve requirements as determined by a prospective gross premium valuation, such minimum reserves remain the minimum requirement under these standards.

B. Categories of Reserves

The following sections of this regulation set forth minimum standards for three categories of accident and sickness insurance reserves:

Section 4. Claim Reserves

Section 5. Premium Reserves

Section 6. Contract Reserves

Adequacy of a company's accident and sickness insurance reserves is to be determined on the basis of all three categories combined. However, these standards emphasize the importance of determining appropriate reserves for each of the three categories separately.

C. Appendices

These standards contain two appendices which are an integral part of the standards, and one additional "supplementary" appendix which is not part of the standards as such, but is included for explanatory and illustrative purposes only.

Appendix A. Specific minimum standards with respect to morbidity, mortality and interest, which apply to claim reserves according to year of incurral and to contract reserves according to year of issue.

Appendix B. Glossary of Technical Terms used.

Appendix C. (Supplementary) Waiver of Premium Reserves.

Section 4. Claim Reserves

A. General

(1) Claim reserves are required for all incurred but unpaid claims on all accident and sickness insurance policies.

(2) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims.

(3) All such reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.

B. Minimum Standards for Claim Reserves

(1) Disability Income

(a) Interest. The maximum interest rate for claim reserves is specified in Appendix A.

(b) Morbidity. Minimum standards with respect to morbidity are those specified in Appendix A except that, at the option of the company:

(i) For claims with a duration from date of disablement of less than two years, reserves may be based on the company's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

(ii) For group disability income claims with a duration from date of disablement of more than two years but less than five years, reserves may, with the approval of the Commission, be based on the company's experience for which the company maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:

- An analysis of the credibility of the experience;
- A description of how all of the company's experience is proposed to be used in setting reserves;
- A description and quantification of the margins to be included;
- A summary of the financial impact that the proposed plan of modification would have had on the company's last filed annual statement;
- A copy of the approval of the proposed plan of modification by the Commission or the chief insurance regulatory official of the company's state of domicile; and
- Any other information deemed necessary by the Commission.

(c) Duration of Disablement. For contracts with an elimination period, the duration of disablement should be measured as dating from the time that benefits would have begun to accrue had there been no elimination period.

(2) All Other Benefits

(a) Interest. The maximum interest rate for claim reserves is specified in Appendix A.

(b) Morbidity or other Contingency. The reserve should be based on the company's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.

C. Claim Reserve Methods Generally

Any generally accepted or reasonable actuarial method or combination of methods may be used to estimate all claim liabilities. The methods used for estimating liabilities generally may be aggregate methods, or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves, however, shall be determined in the aggregate.

Section 5. Premium Reserves

A. General

(1) Unearned premium reserves are required for all contracts with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.

(2) If premiums due and unpaid are carried as an asset, such premiums must be treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes, and the cost of collection associated with due and unpaid premiums must be carried as an offsetting liability.

(3) The gross premiums paid in advance for a period of coverage commencing after the next premium due date which follows the date of valuation may be appropriately discounted to the valuation date and shall be held either as a separate liability or, unless questioned by the Commission, as an addition to the unearned premium reserve which would otherwise be required as a minimum.

B. Minimum Standards for Unearned Premium Reserves

(1) The minimum unearned premium reserve with respect to any contract is the pro-rata unearned modal premium that applies to the premium period beyond the valuation date, with such premium determined on the basis of:

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(a) The valuation net modal premium on the contract reserve basis applying to the contract; or

(b) The gross modal premium for the contract if no contract reserve applies.

(2) However, in no event may the sum of the unearned premium and contract reserves for all contracts of the company subject to contract reserve requirements be less than the gross modal unearned premium reserve on all such contracts, as of the date of valuation. Such reserve shall never be less than the expected claims for the period beyond the valuation date represented by such unearned premium reserve, to the extent not provided for elsewhere.

C. Premium Reserve Methods Generally

When computing premium reserves, the company may employ suitable approximations and estimates including, but not limited to, groupings, averages and aggregate estimation. Such approximations or estimates should be tested periodically to determine their continuing adequacy and reliability.

Section 6. Contract Reserves

A. General

(1) Contract reserves are required, unless otherwise specified in Section 6A(2), for:

(a) All individual and group contracts with which level premiums are used; or

(b) All individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. The values specified in this Subparagraph (b) shall be determined on the basis specified in Section 6B.

(2) Contracts not requiring a contract reserve are:

(a) Contracts which cannot be continued after one year from issue; or

(b) Contracts already in force before the effective date of these standards for which no contract reserve was required under the immediately preceding standards.

(3) The contract reserve is in addition to claim reserves and premium reserves.

(4) The methods and procedures for contract reserves should be consistent with those claim reserves for any contract, or else appropriate adjustment must be made when necessary to assure provision for the aggregate liability. The definition of the date of incurral must be

the same in both determinations.

B. Minimum Standards for Contract Reserves

(1) Basis

(a) Morbidity or other Contingency. Minimum standards with respect to morbidity are those set forth in Appendix A. Valuation net premiums used under each contract must have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration and period for which gross premiums have been calculated.

Contracts for which tabular morbidity standards are not specified in Appendix A shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the Commission.

(b) Interest. The maximum interest rate is specified in Appendix A.

(c) Termination Rates. Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in Appendix A except as noted in the following paragraph.

Under contracts for which premium rates are not guaranteed, and where the effects of company underwriting are specifically used by policy duration in the valuation morbidity standard or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of:

(i) Eighty percent of the total termination rate used in the calculation of the gross premiums, or

(ii) Eight percent.

Where a morbidity standard specified in Appendix A is on an aggregate basis, such morbidity standard may be adjusted to reflect the effect of company underwriting by policy duration. The adjustments must be appropriate to the underwriting and be acceptable to the Commission.

(d) Reserve Method.

(i) For insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the two-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.

(ii) For long-term care insurance, the minimum reserve is the reserve calculated on the one-year full preliminary term method.

(iii) For return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated as follows:

- On the one year preliminary term method if such benefits are provided at any time before the twentieth anniversary;

- On the two year preliminary term method if such benefits are only provided on or after the twentieth anniversary.

The preliminary term method may be applied only in relation to the date of issue of a contract. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions (e.g., projected inflation rates) or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.

(e) Negative Reserves. Negative reserves on any benefit may be offset against positive reserves for other benefits in the same contract, but the total contract reserve with respect to all benefits combined may not be less than zero.

C. Alternative Valuation Methods and Assumptions Generally

Provided the contract reserve on all contracts to which an alternative method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified above, a company may use any reasonable assumptions as to interest rates, termination and/or mortality rates, and rates of morbidity or other contingency. Also, subject to the preceding condition, the company may employ methods other than the methods stated above in determining a sound value of its liabilities under such contracts, including, but not limited to the following: the net level premium method; the one-year full preliminary term method; prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses; the use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity, grouping of similar contract forms; the computation of the reserve for one contract benefit as a percentage of, or by other relation to, the aggregate contract reserves exclusive of the benefit or benefits so valued; and the use of a composite annual claim cost for all or any combination of the benefits included in the contracts valued.

D. Tests For Adequacy and Reasonableness of Contract Reserves

Annually, an appropriate review shall be made of the company's prospective contract liabilities on contracts valued by tabular reserves, to determine the continuing adequacy and reasonableness of the tabular reserves giving consideration to future gross premiums. The company shall

make appropriate increments to such tabular reserves if such tests indicate that the basis of such reserves is no longer adequate; subject, however, to the minimum standards of Section 6B.

In the event a company has a contract or a group of related similar contracts, for which future gross premiums will be restricted by contract, Commission regulation, or for other reasons, such that the future gross premiums reduced by expenses for administration, commissions, and taxes will be insufficient to cover future claims, the company shall establish contract reserves for such shortfall in the aggregate.

Section 7. Reinsurance

Increases to, or credits against reserves carried, arising because of reinsurance assumed or reinsurance ceded, must be determined in a manner consistent with these minimum reserve standards and with all applicable provisions of the reinsurance contracts which affect the company's liabilities.

Section 8. Severability

If any provision in this regulation or the application thereof to any person or circumstance is held for any reason to be invalid, the remainder of the provisions in this regulation shall not be affected thereby.

APPENDIX A.

SPECIFIC STANDARDS FOR MORBIDITY, INTEREST AND MORTALITY

I. MORBIDITY

A. Minimum morbidity standards for valuation of specified individual contract accident and sickness insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(a) Contract Reserves:

Contracts issued on or after January 1, 1965 and prior to January 1, 1986:
The 1964 Commissioners Disability Table (64 CDT).

Contracts issued on or after January 1, 1994:
The 1985 Commissioners Individual Disability Tables A (85CIDA);
or
The 1985 Commissioners Individual Disability Tables B (85CIDB).

Contracts issued during 1986 through 1993:
Optional use of either the 64CDT or the appropriate

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1985 tables (85CIDA and/or 85CIDB).

Each company shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The company may, however, elect to use the other tables with respect to any subsequent statement year.

(b) Claim Reserves:

The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred.

(2) Hospital Benefits, Surgical Benefits and Maternity Benefits (Scheduled benefits or fixed time period benefits only).

(a) Contract Reserves:

Contracts issued on or after January 1, 1955, and before January 1, 1982:
The 1956 Intercompany Hospital-Surgical Tables.

Contracts issued on or after January 1, 1982:
The 1974 Medical Expense Tables, Table A, Transactions of the Society of Actuaries, Volume XXX, pg. 63. Refer to the paper (in the same volume, pg. 9) to which this table is appended, including its discussions, for methods of adjustment for benefits not directly valued in Table A: "Development of the 1974 Medical Expense Benefits," Houghton and Wolf.

(b) Claim Reserves:

No specific standard. See (5).

(3) Cancer Expense Benefits (Scheduled benefits or fixed time period benefits only).

(a) Contract Reserves:

Contracts issued prior to January 1, 1986:

Any tables established for reserve purposes by a qualified actuary and acceptable to the Commission provided, however that the 1974 Cancer Tables as published by Nelson & Warren, Inc. (74N&W Tables) shall not be used unless:

(1) A qualified actuary renders an opinion annually in writing indicating that the use of such tables is appropriate and produces reserves which are based on credible experience or other assumptions designed to place a sound value on the insurer's liabilities; or

(2) An additional reserve is held in addition to the reserve calculated pursuant to the 74N&W Tables, which additional reserve shall be based on the

difference between the company's calculated reserve and the reserve which would be produced by use of the 1985 NAIC Cancer Claim Cost Tables (NAIC Tables) in an amount not less than the following:

(i) As of 12/31/94: the additional reserve divided by three; and

(ii) As of 12/31/95: two times the additional reserve divided by three; and

(iii) As of 1/1/96 and all years thereafter: the full amount of reserve as required and calculated in accordance with the NAIC Tables.

Contracts issued on or after January 1, 1986:

The NAIC Tables

(b) Claim Reserves:
No specific standard. See (5).

(4) Accidental Death Benefits.

(a) Contract Reserves: Contracts issued on or after January 1, 1965:
The 1959 Accidental Death Benefits Table.

(b) Claim Reserves:

Actual amount incurred.

(5) Other Individual Contract Benefits.

(a) Contract Reserves:

For all other individual contract benefits, morbidity assumptions are to be determined as provided in the reserve standards.

(b) Claim Reserves:

For all benefits other than disability, claim reserves are to be determined as provided in the standards.

B. Minimum morbidity standards for valuation of specified group contract accident and sickness insurance benefits are as follows:

(1) Disability Income Benefits Due to Accident or Sickness.

(a) Contract Reserves:

Contracts issued prior to January 1, 1994:
The same basis, if any, as that employed by the company as of December 31, 1993;

Contracts issued on or after January 1, 1994:
The 1987 Commissioners Group Disability Income Table (87CGDT).

(b) Claim Reserves:

For claims incurred on or after January 1, 1994:
The 1987 Commissioners Group Disability Income
Table (87CGDT);

For claims incurred prior to January 1, 1994:
Use of the 87CGDT is optional.

(2) Other Group Contract Benefits.

(a) Contract Reserves:

For all other group contract benefits, morbidity
assumptions are to be determined as provided in the
reserve standards.

(b) Claim Reserves:

For all benefits other than disability, claim reserves
are to be determined as provided in the standards.

II. INTEREST

A. For contract reserves the maximum interest rate is
the maximum rate permitted by law in the valuation of
whole life insurance issued on the same date as the
accident and sickness insurance contract.

B. For claim reserves on policies that require contract
reserves, the maximum interest rate is the maximum rate
permitted by law in the valuation of whole life insurance
issued on the same date as the claim incurral date.

C. For claim reserves on policies not requiring contract
reserves, the maximum interest rate is the maximum rate
permitted by law in the valuation of single premium
immediate annuities issued on the same date as the claim
incurral date, reduced by one hundred basis points.

III. MORTALITY

A. Except as provided in Subsection B, the mortality
basis used shall be according to a table (but without use
of selection factors) permitted by law for the valuation of
whole life insurance issued on the same date as the
accident and sickness insurance contract.

B. Other mortality tables adopted by the NAIC and
promulgated by the Commission may be used in the
calculation of the minimum reserve if appropriate for the
type of benefits and if approved by the Commission. The
request for such approval must include the proposed
mortality table and the reason that the standard specified
in Subsection A is inappropriate.

APPENDIX B.

GLOSSARY OF TECHNICAL TERMS USED

As used in this valuation standard, the following terms

have the following meaning:

ANNUAL-CLAIM COST. The net annual cost per unit of
benefit before the addition of expenses, including claim
settlement expenses, and a margin for profit or
contingencies. For example, the annual claim cost for a
\$100 monthly disability benefit, for a maximum disability
benefit period of one year, with an elimination period of
one week, with respect to a male at age 35, in a certain
occupation might be \$12, while the gross premium for this
benefit might be \$18. The additional \$6 would cover
expenses and profit or contingencies.

CLAIMS ACCRUED. That portion of claims incurred on or
prior to the valuation date which result in liability of the
company for the payment of benefits for medical services
which have been rendered on or prior to the valuation
date, and for the payment of benefits for days of
hospitalization and days of disability which have occurred
on or prior to the valuation date, which the company has
not paid as of the valuation date, but for which it is
liable, and will have to pay after the valuation date. This
liability is sometimes referred to as a liability for
"accrued" benefits. A claim reserve, which represents an
estimate of this accrued claim liability, must be
established.

CLAIMS REPORTED. When a company has been informed
that a claim has been incurred, if the date reported is on
or prior to the valuation date, the claim is considered as a
reported claim for annual statement purposes.

CLAIMS UNACCRUED. That portion of claims incurred on
or prior to the valuation date which result in liability of
the company for the payment of benefits for medical
services expected to be rendered after the valuation date,
and for benefits expected to be payable for days of
hospitalization and days of disability occurring after the
valuation date. This liability is sometimes referred to as a
liability for unaccrued benefits. A claim reserve, which
represents an estimate of the unaccrued claim payments
expected to be made (which may or may not be
discounted with interest), must be established.

CLAIMS UNREPORTED. When a company has not been
informed, on or before the valuation date, concerning a
claim that has been incurred on or prior to the valuation
date, the claim is considered as an unreported claim for
annual statement purposes.

DATE OF DISABLEMENT. The earliest date the insured is
considered as being disabled under the definition of
disability in the contract, based on a doctor's evaluation or
other evidence. Normally this date will coincide with the
start of any elimination period.

ELIMINATION PERIOD. A specified number of days,
weeks, or months starting at the beginning of each period
of loss, during which no benefits are payable.

GROSS PREMIUM. The amount of premium charged by

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the company. It includes the net premium (based on claim-cost) for the risk, together with any loading for expenses, profit or contingencies.

GROUP INSURANCE. The term group insurance includes blanket insurance and franchise insurance and any other forms of group insurance.

LEVEL PREMIUM. A premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time.

Generally, the annual claim costs are expected to increase each year and the company, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.

LONG-TERM CARE INSURANCE. Any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care, mental health or substance abuse services provided in a setting other than an acute care unit of a hospital. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance may be issued by insurers; fraternal benefit societies; health services plans; health maintenance organizations; cooperative non-profit life benefit companies or mutual assessment life, accident and sickness insurers or any similar organization to the extent it is otherwise authorized to issue life or accident and sickness insurance. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

MODAL PREMIUM. This refers to the premium paid on a contract based on a premium term which could be annual, semi-annual, quarterly, monthly, or weekly. Thus if the annual premium is \$100 and if, instead, monthly premiums of \$9 are paid then the modal premium is \$9.

NEGATIVE RESERVE. Normally the terminal reserve is a positive value. However, if the values of the benefits are decreasing with advancing age or duration it could be a negative value, called a negative reserve.

PRELIMINARY TERM RESERVE METHOD. Under this method of valuation the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium (or stream of changing valuation premiums) becomes applicable such that the present value of all such premiums is equal to the present value of all claims expected to be incurred following the end of the preliminary term period.

PRESENT VALUE OF AMOUNTS NOT YET DUE ON CLAIMS. The reserve for "claims unaccrued" (see definition), which may be discounted at interest.

RESERVE. The term "reserve" is used to include all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. A company under its contracts promises benefits which result in:

(a) Claims which have been incurred, that is, for which the company has become obligated to make payment, on or prior to the valuation date. On these claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the company which should be provided for by establishing claim reserves; or

(b) Claims which are expected to be incurred after the valuation date. Any present liability of the company for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.

TERMINAL RESERVE. This is the reserve at the end of a contract year, and is defined as the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.

UNEARNED PREMIUM RESERVE. This reserve values that portion of the premium paid or due to the insurer which is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of \$120 was paid on November 1, \$20 would be earned as of December 31 and the remaining \$100 would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.

VALUATION NET MODAL PREMIUM. This is the modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on any contract to which contract reserves apply. Thus if the mode of payment in effect is quarterly, the valuation net

modal premium is the quarterly equivalent of the valuation net annual premium.

APPENDIX C.

RESERVES FOR WAIVER OF PREMIUM

(Supplementary explanatory material)

Waiver of premium reserves involve several special considerations. First, the disability valuation tables promulgated by the NAIC are based on exposures that include contracts on premium waiver as in-force contracts. Hence, contract reserves based on these tables are NOT reserves on "active lives" but rather reserves on contracts "in force." This is true for the 1964 CDT and for both the 1985 CIDA and CIBD tables.

Accordingly, tabular reserves using any of these tables should value reserves on the following basis:

Claim reserves should include reserves for premiums expected to be waived, valuing as a minimum the valuation net premium being waived.

Premium reserves should include contracts on premium waiver as in-force contracts, valuing as a minimum the unearned modal valuation net premium being waived.

Contract reserves should include recognition of the waiver of premium benefit in addition to other contract benefits provided for, valuing as a minimum the valuation net premium to be waived.

If a company is, instead, valuing reserves on what is truly an active life table, or if a specific valuation table is not being used but the company's gross premiums are calculated on a basis that includes in the projected exposure only those contracts for which premiums are being paid, then it may not be necessary to provide specifically for waiver of premium reserves. Any company using such a true "active life" basis should carefully consider, however, whether or not additional liability should be recognized on account of premiums waived during periods of disability or during claim continuation.

V.A.R. Doc. No. R94-227; Filed November 9, 1993, 11:19 a.m.

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: VR 450-01-0043. Pertaining to the Taking of Black Drum.

Statutory Authority: §§ 28.2-201 and 28.2-204.1 of the Code of Virginia.

Effective Date: January 1, 1994.

Preamble:

This regulation establishes management measures for the black drum fishery designed to cap current harvests, minimize conflicts between user groups, provide accurate commercial fishery data, and protect black drum until they reach sexual maturity.

VR 450-01-0043. Pertaining to the Taking of Black Drum.

§ 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ ~~28.1-23 and 28.1-23.2~~ 28.2-201 and 28.2-204.1 of the Code of Virginia.

B. This regulation amends VR 450-01-0043, "Pertaining to the Taking of Black Drum," which was promulgated on May 5, 1987 March 1, 1992 .

C. The effective date of this regulation is ~~March 1, 1992~~ January 1, 1994 .

§ 2. Definitions.

A. Black Drum: Any fish of the species *Pogonias cromis*.

B. Commercial Harvest: Any black drum taken from the tidal waters of Virginia by any harvesting method, including hook-and-line, and sold.

§ 3. Purpose.

The purpose of this regulation is to limit black drum harvest to levels over the last 10 years in order to prevent overfishing. A management area with time restrictions is also designated to reduce conflicts between recreational and commercial fishermen that concentrate on drum fishing grounds in the Lower Bay. The regulation also provides for the collection of management information for the black drum commercial fishery. Additionally, a minimum size limit is imposed to provide protection of black drum until they reach sexual maturity. *Limited entry in the commercial fishery is implemented to prevent*

overcapitalization and to improve economic benefits to the recent full-time participants in the future.

§ 4. Commercial harvest quota.

During any calendar year, the total allowable sum of commercial harvest of black drum from Virginia tidal waters shall be 120,000 pounds of whole fish. At such time as the total harvest of black drum reaches 120,000 pounds, it shall be unlawful for any person to take, catch, or land any black drum by any method for commercial purposes.

§ 5. Daily bag limits on hook and line harvests.

A. It shall be unlawful for any person using hook and line, rod and reel, or hand line to take or catch from Virginia tidal waters more than one black drum per day. Any black drum taken after the bag limit of one has been reached shall be returned to the water immediately.

B. When fishing from any boat or vessel, the daily bag limit shall be equal to the number of persons on board the vessel. Retention of the legal number of black drum is the responsibility of the vessel operator or owner.

§ 6. Special management area/time restrictions.

It shall be unlawful for any person to place, set, or fish gill nets or trotlines from 7 a.m. to 8:30 p.m. of each day for the period of May 1 to June 7, dates inclusive, in the ~~lower, eastern~~ in the southeastern portion of the Chesapeake Bay in the area bounded by a line drawn from the Cape Charles Jetty to the ~~C-12~~ 36A Buoy to the RN-28 Buoy, south along the Baltimore Channel to the Fourth Island of the Chesapeake Bay Bridge Tunnel, then north along Chesapeake Bay Bridge Tunnel to Fisherman's Island then ~~over~~ north along the coast, returning to the Cape Charles Jetty.

§ 7. Minimum size limit.

A. It shall be unlawful for any person to take, catch, or possess any black drum less than 16 inches in total length.

B. Total length shall be measured in a straight line from the tip of the nose to the tip of the tail.

§ 8. Commercial harvest permits required.

A. It shall be unlawful for any ~~person~~ registered commercial fisherman to take or , catch and , sell , or possess black drum without first having obtained a Black Drum Harvesting and Selling Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in the possession of the permittee while fishing and selling black drum. *Permits shall only be issued to applicants meeting the following criteria:*

1. The applicant shall be a registered commercial fisherman and shall have held a Black Drum Permit

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in at least one year from 1988 to 1993;

2. The applicant shall have documented catch of black drum in at least one year for which a Black Drum Permit was held from 1988 to 1993; and

3. The applicant shall have reported, in accordance with this regulation, any black drum fishery activity in 1992 and 1993, if a Black Drum Permit was held in those years.

B. It shall be unlawful for any person, firm, or corporation to buy any black drum from the harvester without first having obtained a Black Drum Buying Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in possession of the permittee while buying black drum. The commission may grant exceptions to the limited entry criteria listed in subsection A of this section based upon scientific, economic, biological, sociological, and hardship factors. Any person requesting an exception shall provide in writing an explanation for exception and all pertinent information relating to the criteria in subsection A of this section. All exception requests must be received by the commission prior to March 1 of the year for which a permit is requested.

C. Any person, firm or corporation that has black drum in possession with the intent to sell must either be a permitted harvester or buyer, or must be able to demonstrate that those fish were imported from out of the state or purchased from a permitted buyer or seller. It shall be unlawful for any person, firm, or corporation to buy any black drum from the harvester without first having obtained a Black Drum Buying Permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee and a copy kept in possession of the permittee while buying black drum.

D. Any person, firm or corporation that has black drum in possession with the intent to sell must either be a permitted harvester or buyer, or must be able to demonstrate that those fish were imported from another state or purchased from a permitted buyer or seller.

§ 9. Mandatory reporting of commercial harvest.

A. Commercial harvesters and buyers of black drum shall report daily harvest information on forms to be provided by the commission. Such information shall include, but is not limited to, the number of fish, their weight, location of harvest, method of capture and the buyer's and seller's permit identification number. Such reports shall be completed in full and shall be submitted to the commission on a weekly basis.

B. Buyers of black drum imported from out of state shall also report the amount of black drum imported on the forms provided by the commission.

C. Marine Resources Commission personnel may also

collect biological information from black drum accumulated at the place of business of commercial buyers. Such sampling shall be done with the cooperation of the buyers and in a manner which will not inhibit normal business operations.

§ 10. Penalty.

As set forth in § ~~28.1-23~~ 28.2-903 of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class 3 misdemeanor. In addition, those in violation shall forfeit their Black Drum Harvesting or Buying Permit and its privileges.

/s/ William S. Pruitt
Commissioner

VA.R. Doc. No. R94-203; Filed November 5, 1993, 4:15 p.m.

* * * * *

Title of Regulation: VR 450-01-0094. Pertaining to Summer Flounder Quotas.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Dates: October 31, 1993, through December 31, 1993.

Preamble:

This 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 Quotas.

§ 1. Authority, prior regulation, effective date, termination date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 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 regulation.

C. The effective date of this regulation is October 31, 1993.

D. This regulation shall terminate on January 1, 1994.

§ 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.

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§ 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 A. Pruitt
Commissioner

V.A.R. Doc. No. R94-202; Filed November 5, 1993, 4:13 p.m.

* * * * *

Title of Regulation: VR 450-01-0096. Pertaining to Nonresident Harvesters License Fee.

Statutory Authority: § 28.2-227 of the Code of Virginia.

Effective Date: January 1, 1994.

Preamble:

This regulation establishes a nonresident harvesters license fee for any nonresident desiring to take or catch marine fish, crabs, or any other seafood, except oysters, clams, or other mollusks, from the tidal waters of the Commonwealth, for which a license is required.

VR 450-01-0096. Pertaining to Nonresident Harvesters License Fee.

§ 1. Authority, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-227 of the Code of Virginia.

B. The effective date of this regulation is January 1, 1994.

§ 2. Purpose.

The purpose of this regulation is to establish the fee for the nonresident harvesters license.

§ 3. Fee established.

The fee for the nonresident harvesters license shall be \$350.

§ 4. Exceptions.

The nonresident harvesters license shall not be required for persons licensed to fish with saltwater recreational licenses required under §§ 28.2-302.1 through 28.2-302.9 of the Code of Virginia.

§ 5. Penalty.

Penalties for violations of this regulation are prescribed in §§ 28.2-225 and 28.2-227 E of the Code of Virginia.

/s/ William A. Pruitt
Commissioner

V.A.R. Doc. No. R94-204; Filed November 5, 1993, 4:14 p.m.

* * * * *

Title of Regulation: VR 450-01-0097. Pertaining to the Snagging of Fish.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 1993.

Preamble:

This regulation prohibits the snagging of fish for the purpose of reducing snag-and-release injuries and mortalities, and to preserve the public safety.

VR 450-01-0097. Pertaining to the Snagging of Fish.

§ 1. Authority, effective date.

A. This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.

B. The effective date of this regulation is November 1, 1993.

§ 2. Purpose.

The purpose of this regulation is to reduce snagging injuries and mortalities to finfish in Virginia waters, and to preserve the public safety by prohibiting the practice of snagging.

§ 3. Snagging prohibited.

It shall be unlawful for any person to take or to attempt to take any finfish by means of snagging.

§ 4. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

/s/ William A. Pruitt
Commissioner

V.A.R. Doc. No. R94-205; Filed November 5, 1993, 4:18 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

V.A.R. Doc. No. R94-198; Filed November 5, 1993, 10:38 a.m.

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

VIRGINIA ASBESTOS LICENSING BOARD

Title of Regulation: **VR 137-01-1. Public Participation Guidelines.**

Title of Regulation: **VR 394-01-1. Public Participation Guidelines.**

Governor's Comment:

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 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: November 3, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: November 3, 1993

V.A.R. Doc. No. R94-197; Filed November 9, 1993, 10:58 a.m.

V.A.R. Doc. No. R94-200; Filed November 5, 1993, 10:58 a.m.

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STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: **VR 275-01-1. Regulations Governing Virginia Administration of the Federally Guaranteed Student Loan Programs.**

Title of Regulation: **VR 394-01-2. Virginia Certification Standards.**

Governor's Comment:

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 do not object to the initial draft of these regulations with the exception of the provisions on appeals by applicants. It is necessary for applicants to have the opportunity to appeal decisions on their certification which they feel are in error. While the Code does not give the agency statutory authority to hear appeals, the 1994 General Assembly should amend the Code to do just that. 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: November 5, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: November 3, 1993

V.A.R. Doc. No. R94-213; Filed November 8, 1993, 4:08 p.m.

V.A.R. Doc. No. R94-201; Filed November 5, 1993, 10:58 a.m.

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BOARD FOR GEOLOGY

Title of Regulation: **VR 335-01-1. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 394-01-4. Virginia Amusement Device Regulations.**

Title of Regulation: **VR 335-01-1:1. Public Participation Guidelines.**

Governor's Comment:

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 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: November 3, 1993

/s/ Lawrence Douglas Wilder
Governor
Date: November 3, 1993

Governor

VA.R. Doc. No. R94-199; Filed November 5, 1993, 10:58 a.m.

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Title of Regulation: **VR 394-01-6. Virginia Statewide Fire Prevention Code.**

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: November 3, 1993

VA.R. Doc. No. R94-210; Filed November 8, 1993, 4:08 p.m.

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Title of Regulation: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code.**

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: November 5, 1993

VA.R. Doc. No. R94-212; Filed November 8, 1993, 4:08 p.m.

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Title of Regulation: **VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code.**

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: November 5, 1993

VA.R. Doc. No. R94-211; Filed November 8, 1993, 4:08 p.m.

BOARD OF MEDICINE

Title of Regulation: **VR 465-02-1. Regulations Governing**

the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.

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 27, 1993

VA.R. Doc. No. R94-193; Filed October 29, 1993, 3:16 p.m.

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Title of Regulation: **VR 465-05-1. Regulations Governing the Practice of Physicians' Assistants.**

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 28, 1993

VA.R. Doc. No. R94-190; Filed October 29, 1993, 3:15 p.m.

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Title of Regulation: **VR 465-08-1. Regulations for Certification of Occupational Therapists.**

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 31, 1993

VA.R. Doc. No. R94-189; Filed November 2, 1993, 3:27 p.m.

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Title of Regulation: **VR 465-11-1. Licensed Acupuncturists.**

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 28, 1993

Date: November 5, 1993

V.A.R. Doc. No. R94-215; Filed November 8, 1993, 4:08 p.m.

V.A.R. Doc. No. R94-191; Filed October 29, 1993, 3:16 p.m.

BOARD OF NURSING

Title of Regulation: **VR 495-01-1. Board of Nursing Regulations.**

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 28, 1993

V.A.R. Doc. No. R94-192; Filed November 4, 1993, 9:57 a.m.

BOARD OF PSYCHOLOGY

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

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: November 5, 1993

V.A.R. Doc. No. R94-214; Filed November 8, 1993, 4:08 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

Title of Regulation: **VR 627-01-1. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 627-01-1:1. Public Participation Guidelines.**

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

HJR 593: Study of Crime and Violence Prevention through Community Economic Stimulation and Development

October 7, 1993, Alexandria

At this subcommittee's fourth public hearing, officials from United Community Ministries (UCM), Gum Springs Community Development Corporation, and the Alexandria Economic Development Program detailed innovative approaches taken in their communities to fight crime and violence and to increase economic opportunities for low-income residents in blighted and depressed urban areas.

Community Initiatives

Several UCM programs, such as NEW YOU, ACTS, and Microenterprises, were presented as examples of community partnerships that allow the working poor to take advantage of job training opportunities. The Microenterprise project encourages low-income residents of southern Fairfax County to begin small-scale, informal enterprises. The program provides training, technical assistance, counseling, mentoring, and access to financing for participating clients. This project desperately needs state tax credits to encourage equipment donations and state grants for revolving start-up loans to give microentrepreneurs technical assistance and support services.

ACTS is a free adult computer training school taught by volunteers. Graduates, who otherwise would be woefully lacking in computer skills, are referred to job opportunities. NEW YOU is a nationally recognized seven-month program that serves to enhance the self-esteem of economically disadvantaged

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youth. Other programs are directed specifically to young, black females. Also, an Afro-American monitoring advisory counsel has been established.

An Alexandria city official outlined findings of a city report that reviewed the reasons for youth conflict and violence. This report placed much of the blame for youth violence on unemployment, inadequate parental controls, racial differences, and the lack of adequate educational opportunities. The report stressed the need for appropriate job and skill training and more opportunities for youth to vent their frustrations through counseling and discussion groups. The shortage of quality training and monitoring programs was found to result in drug abuse, teen pregnancy and alcoholism, juvenile delinquency, and physical violence.

Alexandria has begun two summer programs for youth in an attempt to prevent violence before it occurs and provide deprived young people an opportunity to participate in a program of self-help and education. Funding is desperately needed to enable these programs to operate year round.

During a discussion by subcommittee members, Chairman Hall informed those present that each incarcerated juvenile costs the Commonwealth \$36,000 yearly. Eighty percent of our prison population are school drop outs.

Legislative Proposals

Subcommittee staff briefly reviewed recommendations by a group composed of staff, citizen subcommittee members, and representatives from various cities which met on September 22. This group recommended that legislation be drafted to:

1. Grant "spot" eminent domain powers to localities outside designated redevelopment areas.
2. Expand eminent domain powers of localities to allow condemnation of public nuisances in redevelopment areas (for example, where vacant properties are used for illegal drug activities).
3. Enhance the likelihood that localities will receive clear title to acquire abandoned property by restructuring pre-sale lienor notice requirements and by reducing from two years to 90 days the period during which lien holders or persons with title claims may file an appeal in the tax sale process.
4. Amend Virginia's enterprise zone enabling legislation to make the Commonwealth eligible for additional funding that will otherwise be lost.
5. Raise the grantor's tax by five cents per \$100 in all real estate transactions to provide state financial assistance for rehabilitation of blighted areas.

The study group also recommended support for two proposals by the Governor's Commission on Violent Crime pertaining to crime prevention through environmental design and a recommendation that each locality establish a Community Crime Prevention Committee. The study group also suggested that the Virginia Housing Study Commission Subcommittee on Blighted and Deteriorated Housing in Virginia (HJR 489) be encouraged to continue its review of (i) potential changes in Virginia's

delinquent tax sale process and (ii) the feasibility of a reduction from three years to one year in the period of time before which a bill in equity may be filed for a tax lien on abandoned property.

The subcommittee concluded its meeting with a tour of United Community Ministries and the MurryGate Housing Project.

A final work session will be held in mid-November to review draft legislation.

The Honorable Franklin P. Hall, *Chairman*
Legislative Services contact: Oscar R. Brinson



HJR 645: Joint Subcommittee Studying the Mine Safety Law of 1966

October 6, 1993, Richmond

The joint subcommittee continued to address fundamental policy issues relating to mine safety legislation. At its sixth business meeting, the members made recommendations regarding licensing, mine inspections, and complaint procedures.

Inspection Responsibilities for Mineral Mines

Previous testimony before the joint subcommittee indicated that the Virginia Department of Mines, Minerals and Energy (DMME) inspects approximately 500 mineral mines, and the federal Mine Safety and Health Administration (MSHA) inspects approximately 200 non-coal sites. Staff presented subcommittee members with possible explanations for the 300 sites inspected by DMME but not by MSHA. As many as 143 of these sites are not inspected by MSHA because they are classified as surface nonproducing mines. While MSHA inspectors do not inspect surface nonproducing mines, these mines are required to be inspected by DMME inspectors twice annually if they are licensed by the Commonwealth. Current Virginia law does not require that a mine be producing in order to hold a license. A small number of inactive sites are sites that are pending release of their reclamation bond, which is held for two growing seasons following the completion of revegetation work.

Neither DMME nor MSHA inspects sites classified as borrow pits. Staff presented the Excavation Activity Evaluation Chart used by DMME in determining whether a site qualifies as a mine and is therefore subject to the Mine Safety Law's inspection requirements. The criteria applied by DMME include, among other things, whether the extracted material is used for bulk

rather than its intrinsic qualities, whether it is processed before use, and whether it is sold commercially. These same criteria are used by MSHA in determining if a site is under MSHA or OSHA jurisdiction. The definition of a borrow pit used by the state and federal agencies therefore does not explain the difference in the number of sites each agency regulates. However, a determination of whether a particular site constitutes a mineral mine or a borrow pit may vary because these criteria may be applied differently by individual DMME and MSHA inspectors.

Licensing Provisions for Coal and Mineral Mines

The Mine Safety Law currently provides that a license to operate a coal mine may be revoked or denied if the holder or applicant has been convicted of tampering with a methane monitor or possessing smoking materials in an underground coal mine. The joint subcommittee recommended that the purpose of a mine license should be shifted from only collecting administrative information and raising revenue to requiring that a set of legal requirements be satisfied as a condition for the right to undertake mining. The subcommittee discussed the necessity of changing the current law in light of the Wise County Circuit Court's recent issuance of a default decree enjoining an individual from operating any mine in Virginia. The defendant had been cited for numerous violations of the Mine Safety Law, and the court based its decision on his demonstrated wanton disregard of the law.

Current Virginia law also provides that licenses are issued for mines, and not for mine operators. Though a mine license must identify its operator, holding an operator's license is not a prerequisite to obtaining a mine license. The members agreed to continue licensing mines only, though they asked staff to develop options for the definition of an operator.

A related set of decisions addressed the types of information that should be included in a mine license application. Currently, applicants must provide administrative information, an annual map, and an annual report. The members concurred that, in addition to the currently provided data, applicants should supply information regarding persons with overall business responsibility for the mine's operations, information regarding key personnel and emergency contacts, and information necessary to make risk assessments.

The majority of members adopted a recommendation that mine licenses should be revoked or denied for a pattern of willful violations of the Mine Safety Law that result in imminent danger. The subcommittee also recommended that decisions to revoke or deny a license should be made by the chief (if a coal mine) or the director of the Division of Mineral Mining (if a mineral mine). Appeals of decisions to revoke or deny a mine license should be made directly to court.

The consensus of the joint subcommittee is that the existing requirement of an annual license fee should be maintained. The members also decided that the amount of the annual fee should be kept at current levels — \$75 for a mine license for coal mines

and most mineral mines and \$20 for small sand and gravel operations.

Mine Inspections

The Mine Safety Law requires that underground mining operations be inspected at least every 90 days and that surface mining operations be inspected at least every 180 days. The subcommittee endorsed proposals that the minimum number of required complete inspections of coal mines and mineral mines be reduced to one half of the number of inspections currently required, and that additional inspections for each mine be based upon an evaluation of risk for each mine. With respect to surface mineral mines, the joint subcommittee further voted to adopt a proposal that DMME inspect only those sites that are not inspected by MSHA, and the determination of those sites shall be made by a "joint agency committee of cooperation" composed of MSHA and DMME personnel.

By deciding that spot inspections should be based on evaluations of risk at mines, the subcommittee had to decide how risks should be evaluated. The members concurred that an integrated risk assessment measure should be developed. This measure will be used to estimate the potential danger of activities or conditions in order to target more frequent and more comprehensive inspections at the more hazardous facilities. Staff was asked to prepare proposals regarding the variables to be included in a risk assessment measure.

The members concurred that the timing of DMME inspections of coal mining and underground mineral mining operations should be coordinated with MSHA to maximize coverage. For example, state inspections should be held in-between MSHA inspections. This approach was touted as maximizing coverage by avoiding situations where both inspections are performed in proximity to each other. As previously noted, the members chose to eliminate DMME inspections of surface mineral mining sites that are inspected by MSHA. By so deciding, the subcommittee avoided addressing the need to coordinate DMME and MSHA inspections.

Regarding the sharing of information between state and federal inspectors, the subcommittee recommended that DMME inspectors should review the most recent MSHA inspection reports prior to their inspections and should share the results of their inspections with MSHA. This recommendation would apply to coal and underground mineral mining, but not to surface mineral mining because of the decision to eliminate duplicate state and federal inspections. The elimination of state inspections at surface mineral mines that are federally inspected is not intended to limit the jurisdiction of DMME personnel from investigating accidents or responding to complaints.

A related decision involved the comprehensiveness of DMME review of mine records during inspections. The members adopted a suggestion that the current practice, which requires that the most recent mine records be comprehensively reviewed, be continued.

The subcommittee has heard that mine inspectors have not always been provided with transportation to the mine's working face promptly upon their arrival at an underground mine site. The Mine Safety Law now provides that operators provide inspectors with proper facilities for entering mines and making inspections. The members decided that operators should be required to provide inspectors with transportation to the working face in a reasonable amount of time.

Mine Safety Complaints

The Mine Safety Law does not establish a procedure for persons to file complaints regarding mine safety. Similarly, the current law is silent on issues relating to the confidentiality of persons making complaints and the protection of complaining miners from retaliation by their employers. After hearing that the cost of North Carolina's toll-free hotline for complaints exceeds \$3,300 annually, members of the joint subcommittee recommended that the current procedure for making complaints be continued. This procedure allows complaints to be made to DMME by phone at DMME offices or at inspectors' homes, in person at DMME offices, or in person to inspectors.

Two current practices for notifying miners of the process for making complaints were endorsed by the subcommittee. These practices require operators to provide a copy of the Mine Safety Law (including sections on complaint procedures) to all new miners, and to post complaint numbers in a readily available location at all mines.

The final set of decisions made by the subcommittee concerned protecting complainants from discrimination, and protecting operators from frivolous complaints by employees. The members decided that the Mine Safety Law should protect the confidentiality of persons making complaints, while requiring that DMME give to the operator a copy of the complaint form without the name of the person making the complaint.

October 27, 1993, Richmond

The subcommittee focused its attention, at its seventh business meeting, on definitions of persons subject to the Mine Safety Law, civil enforcement mechanisms and procedures, and miner certification. As with previous decisions made by the subcommittee, recommendations often reflected the differences between coal and mineral mining, and between surface and underground mining.

Defining Responsible Persons

The Mine Safety Law currently defines specific persons, such as the operator, superintendent, and supervisor, associated with mine operations, and assigns responsibilities to them. However,

the clarity of the existing definitions has been criticized. For example, the law does not define an "owner," and the relationship between a mine owner, operator, and independent contractor is not addressed.

After declining to postpone adopting definitions for categories of persons until the legal obligations have been established, the subcommittee voted to recommend that the law utilize the definitions of persons contained in the federal Mine Safety and Health Act for both coal and mineral mining. The federal law contains definitions of an operator, agent, and miner. In addition, federal regulations define certified, competent, experienced, and authorized person. The subcommittee rejected options that would have established separate definitions for the owner, operator, and independent contractor. Members also declined to establish a definition for a "visitor" to a mine site.

Civil Enforcement Mechanisms

The Mine Safety Law authorizes the department to issue notices of violations discovered during mine inspections, including recommendations made or actions taken to eliminate the violations. The law also authorizes the agency to issue closure orders when (i) imminent or serious danger is discovered, (ii) an accident scene is being investigated, and (iii) a mine is being operated without a license. In addition, the agency is authorized to apply to court for an injunction where any violation of Title 45.1 (or any regulation) occurs or is threatened. The subcommittee recommended that, with respect to both coal and mineral mining, the issuance of notices of violations should be permitted when the agency finds a violation of law or regulation. It also agreed that the department be authorized to issue closure orders upon the same circumstances as are currently provided. The law should specifically allow the department to issue closure orders when a person fails to take corrective action specified in a notice of violation, though the violation may not create a serious or imminent danger, provided that such an order not be issued during the pendency of an administrative appeal of the issuance of the notice of violation.

The members concurred that a closure order should be lifted, and a notice of correction issued, upon a finding of compliance with the law or regulation. They also want the law to make clear that notices of violations and closure orders will be vacated if they are found to have been improperly issued.

The consensus of the subcommittee was that the agency should be able to obtain injunctions to compel compliance with a specific law or regulation after an operator has failed to correct a violation noted in a notice of violation or closure order. Courts should also be authorized to enjoin the continued operation of a mine or mines by a person upon a finding that compliance with the Mine Safety Law will not be maintained. A likelihood of future failure to maintain compliance can be evidenced by either a history of noncompliance, or by a history of closure orders being issued, at the mine or mines operated by the person. The subcommittee chose to drop "threatened" violations of the Mine Safety Law as grounds for obtaining injunctive relief.

Appeals of Administrative Enforcement Actions

With respect to coal mining, the Mine Safety Law currently does not provide a procedure for administrative or judicial review of the issuance of notices of violations and allows only judicial review of the issuance of closure orders. Regulations promulgated for mineral mining establish a procedure for administrative review of notices of violations and closure orders through informal conferences. The subcommittee recommended that a new procedure be instituted to address both coal and mineral mining.

The decision of an inspector to issue a notice of violation should be subject to administrative review under a procedure following the case decision process of the Administrative Process Act (APA). The first stage of review would be an informal conference, to be conducted by the chief of the Division of Mines (if it involves coal mining) or the director of the Division of Mineral Mining (if it involves mineral mining). If an agreement is not reached following the informal conference, a formal litigated issues hearing would be held pursuant to § 9-6.14:12 of the APA. The hearing would be conducted by a hearings officer, with his recommendations being subject to review and approval by the director of the department. An unsatisfied party may then seek judicial review as provided in Article 4 of the APA. The scope of a court's review is limited to issues of law, which encompasses whether the agency followed required procedures and whether the agency's findings of fact are supported by the evidential record.

The subcommittee decided that operators should have the right to appeal the issuance of a closure order immediately to circuit court. The law should not provide for administrative review of the agency's action. The burden of proof in such a case would rest with the operator, and the closure order would remain in effect pending the court's ruling. The court's jurisdiction in such cases would encompass all questions of law and fact.

Miner Certification

The Mine Safety Law provides that the power to certify miners is vested in one seven-member Board of Examiners. The law establishes certain positions, including but not limited to mine foreman, section foreman, fire boss, and chief electrician, which require certification. The board, which currently covers both coal and mineral mining, may designate other positions as also requiring certification. Other duties of the board include issuing certifications, conducting revocation hearings, and administering examinations.

The members decided that separate boards should be established for coal and mineral mining. The board for coal mining should have five members, consisting of the chief, an underground mine industry representative, an underground mine laborer, a surface mine industry representative, and a surface mine laborer. Staff was asked to prepare new language establishing criteria for membership to be considered by the subcommittee at a future meeting. With respect to mineral mining, the

board of examiners should have seven members, consisting of the division director (who will be chairman), two surface mine industry representatives, two surface mine laborers, one underground mine industry representative, and one underground mine laborer.

With respect to both coal and mineral mining, the subcommittee voted to continue the current arrangement that the types of certification and qualifications are established by a combination of statutory law and agency regulation. Types of certifications will be established by statute, but the boards will have the authority to establish new types of certification and to specify the qualifications for obtaining certification by regulation.

The types of certifications to be included in statutory law should be different for coal and mineral mining. With respect to coal mining, the members recommended that all but one of the 20 existing certifications be continued. With respect to mineral mining, the subcommittee endorsed a suggestion that mineral mining certifications be mandated for several positions, with others not required by statute.

In addition to these categories, the subcommittee endorsed the establishment of a new general miner certification for both coal mining and mineral mining. The certifications would require a knowledge of first aid and a general working knowledge of the health and safety laws and regulations. The general miner certification would apply to all persons commencing work in mines after the effective date of the proposed legislation.

The subcommittee recommended that certifications for coal mining be issued for the life of the miner, but that the board of examiners for coal establish requirements for continuing education, which must be met in order to maintain the certification. Certifications would be suspended if the continuing education requirements are not met, and continued failure to meet the requirements would cause revocation of the certification. The board should also establish requirements that miners provide information needed by the board in connection with the continuing education requirement, such as the miner's current address.

The subcommittee recommended that most certifications for mineral mining be issued for a five-year period, after which they would expire unless renewed. An exception to the five-year period would be made for the general miner certification, which would have no fixed term. In order to renew a mineral mining certification (other than the general miner certification), a mineral miner would be required to be retested. Administrative information, such as the miner's address, would be required as a condition of renewal.

The members of the subcommittee agreed that, with respect to both coal and mineral mining, Virginia should adopt a limited reciprocity program. Miners certified in other states should be accepted automatically in the Commonwealth if the other state (i) recognizes certificates issued to miners in Virginia, and (ii) has requirements for certification that are substantially equivalent to those of Virginia. The subcommittee endorsed keeping

the current fee schedule, which establishes a charge of \$10 per examination, for both coal and mineral mining.

The consensus of the joint subcommittee was that standards for revocation of miner certifications should be established by statutory law rather than by regulation. This position, which applies to both coal and mineral mining, reflects the current law. Finally, the members agreed that the current arrangement regarding who is authorized to bring matters regarding certifications before a board should be continued. The current practice permits matters to be brought by miners, operators, and agency personnel.

Technical Requirements Subcommittees

As the study progresses, the emphasis on reviewing technical requirements will increase. In order to facilitate the analysis of lengthy technical standards to be included in a prescriptive statute, the Chairman appointed two subcommittees. The coal standards subcommittee is comprised of Senator Reasor, Senator Wampler, and Delegate Phillips. The members of the mineral standards subcommittee include Chairman Smith, Delegate Stump, and Senator Norment. The next meeting of the joint subcommittee will be held on November 23. An additional meeting has been scheduled for December 16.

The Honorable Alson H. Smith, Jr., *Chairman*
Legislative Services contact: Franklin D. Munyan



SJR 234: Subcommittee Studying the Funding Requirements of the Unemployment Compensation Trust Fund

October 11, 1993, Richmond

Commissioner Ralph Cantrell from the Virginia Employment Commission (VEC) presented the VEC's annual briefing to the subcommittee on current Virginia unemployment trends, the Unemployment Compensation Trust Fund's present and projected balance, and other related issues. He projected that the trust fund is maintaining an acceptable level of solvency and, therefore, recommended no changes in employer taxes or employee benefits within the unemployment insurance program.

The unemployment compensation program's key barometers are (i) new claims filed, (ii) the number of claimants who exhaust their maximum benefit entitlements, and (iii) the trust fund's balance. These indicators interact to show the program's

relative stability. For example, if the number of new benefits claimants is rising and the number of claimants using their maximum entitlements is also trending upward, the trust fund's balance will probably decline.

Virginia's unemployment rate was slightly above 5 percent on August 31, 1993. The VEC is currently receiving about 3,500 new claims per week, many resulting from short-term, seasonal lay-offs (in contrast to permanent discharges from employment). The current monthly rate of 14,000 new claims is down substantially from one year ago, when new claims totaled in excess of 20,000 per month. The current final-payment, or exhaustion rate, is also showing a downward trend: just slightly over 3,000 in August 1993, compared to over 4,000 in August 1992.

These key trends are encouraging. However, benefit payments over the past year have substantially reduced the trust fund balance. The January 1992 balance of \$573 million declined to \$498.2 million by January 1993. While the VEC projects a December 31, 1993, balance approaching \$540 million, the expected \$30 million decline by year's end will reduce the trust fund's statutory adequacy level to approximately 64 percent.

Virginia's Unemployment Compensation Act requires the VEC to annually determine (as of July 1) whether the then-current trust fund balance is adequate to meet likely future benefit payments. Fund adequacy is calculated by reference to a formula established in Section 60.2-533 of the *Code*. The statutory formula seeks to answer the following question: How much money would the VEC require to pay 18 months of unemployment benefits if (i) the trust fund received no revenue during that period, and (ii) benefit payment costs were at levels equaling historic highs during the past 25 years. The amount derived is the ideal trust fund balance.

The VEC projects that its 1993 calculation will show the July 1, 1993, trust fund balance to be 64 percent of the ideal balance. However, it also projects an increase in trust fund adequacy from 64 percent in 1993 to 92 percent by 1997. This increase assumes (i) a constant five percent unemployment level within the Commonwealth and (ii) no increases in unemployment compensation benefits or taxes. The VEC recommended no change in employee benefits or employee tax levels.

The subcommittee learned that Virginia's unemployment compensation program compares favorably with the programs of other states in the region. North Carolina, for example, maintained consistently higher levels of initial benefits claims through the end of 1992. Georgia, a sister-state with a comparable business base, also experienced substantially higher levels of initial claims in 1992. Additionally, Virginia's 1992 initial claims level was typically below the average of all states according to data furnished by the U.S. Department of Labor.

The Honorable Elliot S. Schewel, *Chairman*
Legislative Services contact: Arlen K. Bolstad



HJR 519: Joint Subcommittee on the Interrelationship between the Commonwealth and Local Governments in Environmental and Building Code Matters

October 18, 1993, Richmond

The first meeting of the subcommittee was devoted to agency presentations of the background of the Pickett Road (Fairfax County) tank farm oil leakage. This leakage and the response to it gave rise to the study.

Background

Personnel from the Department of Environmental Quality and Department of Economic Development reported that:

- The facility was built in 1960 and expanded in 1971;
- The first complaint — the smell of oil — was received in September of 1990;
- The problem was traced to the Pickett Road petroleum storage facility that is used by oil companies as a distribution point for petroleum products distributed in the D.C. area (including adjacent areas in Maryland and Virginia);
- The federal Environmental Protection Agency, in May 1991, took the lead in the clean-up;
- The estimated accumulated spill totals 172,000 gallons of oil over a 30-year period, primarily from spills during loading;
- The time of clean-up is estimated to be 10 to 15 years, and the cost, including penalties, will approach \$160 million.

The Department of Economic Development reported that it estimates the cost of relocating the Pickett Road facility at \$140 million, excluding land costs, permit fees, and engineering and legal fees.

Virginia's newly formed Department of Environmental Quality has put in place an environmental emergency response team and regulations covering reporting the type of tank and the location and operation of tanks that will put Virginia in the forefront of the states in this area. There is also legislation being considered at the federal level regulating above-ground storage tanks.

Subcommittee Action

The subcommittee, after requesting additional information from the Departments of Economic Development and Housing and Community Development, discussed the request of local governments for more regulatory authority over storage tank facilities.

Pending receipt of additional information, the subcommittee preliminarily agreed that:

1. Regulation of environmental matters remain with the Department of Environmental Quality due to the technical nature of the subject matter and to furnish an opportunity for review of the effectiveness of the recently adopted regulations.
2. Enforcement of the Uniform Statewide Building Code remain with local governments, with the uniformity of the Code being maintained under the auspices of the Department of Housing and Community Development, as is now the case.

The subcommittee will meet at least once more in 1993 at a date to be announced.

The Honorable Robert E. Harris, *Chairman*
Legislative Services contact: C.M. Conner, Jr.



HJR 100: Joint Subcommittee Studying the Use of Vehicles Powered by Clean Transportation Fuels

October 20, 1993, Harrisonburg

LEV Program

The subcommittee was briefed on the status of efforts to have the Ozone Transport Commission (OTC) petition the Environmental Protection Agency (EPA) to require the implementation of low-emission vehicle (LEV) programs in all states represented on the commission. Northern Virginia, as part of the Washington, D.C., air quality nonattainment area, would be subject to any such program. OTC consideration of such a request to EPA was initiated by petitions from Maryland, Maine, and Massachusetts. So far, four public hearings, the most recent of which was held in Washington on September 1, have been held by OTC on the matter. Currently, a technical subcommittee of OTC is developing a draft recommendation setting out the air quality benefits and economic costs of LEVs for consideration by the commission, probably at a meeting in early February 1994.

The subcommittee instructed staff to prepare, for pre-filing in advance of the 1994 Session of the General Assembly, a draft joint resolution expressing opposition to a Northern Virginia LEV program and the imposition of such a program by OTC and EPA over the opposition of the legislatures of the affected states. Staff of the Department of Environmental Quality and the Department of Transportation (VDOT) were requested to provide the subcommittee with their definitive position as to the likelihood of Virginia's losing highway funds or being subject

to other federal sanctions if the legislature fails to provide for a Northern Virginia LEV program.

CIT

The Center for Innovative Technology (CIT) has under way programs affecting virtually all aspects of the environment: air, water, and solid waste. Among them are projects developing low-emission lawn mowers, garden tractors, and weed trimmers; increasing the use of ceramics in high-temperature gasoline and diesel engines to produce engines emitting lower amounts of nitrogen oxides; development of low-corrosion materials for use in methanol engines and fuel systems; and enhancing the efficiency of motor vehicle engines through improved engine control computers.

Soy Diesel Fuel

The subcommittee was briefed on the benefits of "soy diesel" fuel, made from soy beans. Soy diesel not only produces less pollution than "petro" diesel (conventional diesel fuel made from petroleum), it also uses a renewable resource — soy beans — as its prime ingredient. A spokesman suggested that increased use of soy diesel could reduce air pollution and improve energy independence at the same time. He concluded by recommending that Virginia's clean fuels statutes be amended to accord soy diesel the same status as other alternative fuels.

Standard Fueling Nozzle

Subcommittee members were informed of the lack of a standard fueling nozzle and receptacle for compressed natural gas vehicles and filling stations and were asked to take appropriate action to bring about the acceptance of the NGV-1 standard for these devices in Virginia. Failure to adopt a common standard limits the ability of natural gas vehicles to fuel at more than one location. A VDOT representative confirmed that each of VDOT's compressed natural gas fueling stations uses different, noncompatible connectors.

Federal Grants

Federal grants awarded to VDOT and Virginia Beach for the purchase of "dedicated" clean fuel vehicles will allow VDOT to acquire three propane-powered dump trucks (one for each of VDOT's three clean fuels demonstration areas) and Virginia Beach to acquire a compressed natural gas-powered school bus.

Next Meeting

Following a general discussion of various options, the subcommittee instructed staff to prepare several pieces of draft legislation for discussion at its next meeting, scheduled for 9:30 a.m. on November 22 in Richmond, as possible legislative recommendations to the 1994 Session of the General Assembly.

The Honorable Arthur R. Giesen, Jr., *Chairman*
Legislative Services contact: Alan B. Wambold



SJR 314: Joint Subcommittee Studying Ways to Assist Small Business in Virginia

October 21, 1993, Richmond

Background

The 1993 General Assembly adopted SJR 314, specifying three objectives for the joint subcommittee: (i) explore and recommend ways to enhance small business opportunities, (ii) identify archaic and onerous regulations that may impede business, and (iii) monitor federal programs to determine what, if any, complementary state action is necessary.

Information provided by staff illustrates the impact of small business on the Commonwealth's economy. More than three-quarters of all Virginia businesses have fewer than 10 employees; 95% employ fewer than 50. Companies with fewer than 100 employees account for 98% of Virginia's employers and 44% of its private sector work force.

Issues Confronting Small Businesses

Small businesses tend to have needs that exceed the resources available to cover them. Among them: capital, planning, technology, and marketing. In addition, new challenges confronting small businesses—perhaps disproportionately—include health care reform, defense conversion, and increasingly burdensome regulation. The subcommittee received testimony from several invited speakers with expertise on these issues.

Regulation

One area of great concern to small businesses is perceived over-regulation. One witness told the subcommittee that compliance with onerous rules and regulations is an "insurmountable obstacle" for many small businesses attempting to go into or remain in business. Another speaker testified that environmental regulations are difficult to interpret and are unfairly and unevenly applied at the state level. He said that the inclination is to "test, test, study, study, report, report," rather than to focus on resolving problems. Both speakers urged placing more emphasis on upgrading voluntary compliance efforts.

Public Procurement

Another problem for small businesses, according to testimony provided by three speakers, involves their inability to receive fair consideration when attempting to secure public contracts. The Virginia Public Procurement Act was said not to be serving its intended purposes of obtaining high quality goods and

services at reasonable prices, promoting competition, and providing equal access to the procurement process. The act's "minimal notice requirements and the nature and extent of exceptions allowed by the act chill whatever competition (it) is trying to foster," according to Carlos Sandoval, who represented the Minority Business Association of Northern Virginia. He recommended that the act be revised to include:

- definable award standards for competitive bidding and competitive negotiation;
- a central posting place for all requests for proposal;
- elimination of the ability to "sole source" procurements under \$100,000;
- capping of bonds to a particular percentage of the contract value;
- establishment of a small business procurement program; and
- establishment of an administrative procedure in which a contested award can be stayed pending resolution of a dispute.

Chairman Walker noted that the General Assembly is currently reviewing the provisions and application of the Public Procurement Act in a few forums and stated that the subcommittee will be able to draw upon those efforts in its deliberations.

Defense Conversion

Another challenge that small businesses must respond to involves reducing the negative effects of defense downsizing. The subcommittee was briefed on the work of the small, minority- and women-owned businesses committee of the Governor's Commission on Defense Conversion and Economic Adjustment. Cited by the committee as obstacles confronting small businesses were: (i) a lack of coordination and communication within the small business community and between small business and government; (ii) a competitive market where larger firms generally not interested in small jobs are crowding out small businesses lacking the resources to compete; (iii) a financial community that has so severely limited access to capital that firms with no debt and excellent credit histories are unable to secure bonding or loans to fund growth; and (iv) a government procurement process that does little to encourage small business participation, particularly at the state level.

Principal among the committee's recommendations are to:

- Create an advocacy program to further the interests of small, minority- and women-owned businesses by working in cooperation with government and private sector entities to eliminate barriers to these businesses in the conversion process and by working closely with the Virginia Small Business Advisory Board;
- Create a government acquisition committee to research procurement policies and regulations having a negative impact on small businesses;
- Enhance the Small Business Development Center (SBDC) program, including the provision of additional resources; and
- Facilitate cooperative interaction between the Small Business Advisory Board, the Virginia Small Business Financing Authority, the SBDC program, and the advocacy program to develop additional and alternative sources of capital access,

create programs of mentorship between capital access professionals and small business, and establish a mechanism for timely information exchange.

Health Insurance

The cost and availability of health insurance is another issue of paramount importance to small businesses. Although federal health care reform is on the horizon—with significant changes looming for small business—state efforts to improve the small employer market are continuing. The subcommittee was briefed on these reforms by Jane Kusiak, director of the Joint Commission on Health Care. She explained that movement away from experience rating in the small group commercial insurance market toward a community rating system will improve the overall market, where it is currently estimated that a 600 percent spread in rates exists for small employer groups.

The Small Business Development Center Program

Robert Smith, director of Virginia's Small Business Development Center, provided the subcommittee with an overview of the SBDC program. Established by the General Assembly in the late 1980s and funded at the federal, state, and local levels, the program's mission is to help stimulate the growth of the Commonwealth's economy by providing management and technical assistance to small and medium-sized businesses.

Currently, there are 13 SBDCs in 21 locations throughout the Commonwealth. They provide direct, one-on-one counseling at no cost to clients in areas including business start-up, sources of capital, and marketing/sales. The centers will serve an estimated 3,000 businesses in 1993. Responding to a member's question, Mr. Smith stated that the program's lack of aggressive marketing is partly by design, because it does not have the resources to significantly expand its client level.

Future Plans

Chairman Walker stated that the panel plans to conduct public hearings throughout the Commonwealth, with the first scheduled for December 6 in Norfolk. He also indicated that it is likely that the subcommittee will continue its work through next year.

The Honorable Stanley C. Walker, *Chairman*
Legislative Services contact: Mark C. Pratt



SJR 195: Joint Subcommittee Studying Virginia's Current Bingo and Raffle Statutes

September 22, 1993, Richmond

For its second meeting of 1993, the joint subcommittee conducted a public hearing to receive comments on the operation and management of bingo and raffle games in the Commonwealth, including rental fees paid to bingo facility owners, percentages of profits actually returned to charitable organizations, and illegal bingo and raffle operations. The list of persons who participated in the public hearing and/or submitted written testimony included local government officials, representatives of national charity gaming trade associations, bingo players, bingo game operators, and manufacturers of bingo supplies. Recommendations made at the public hearing included:

- Repeal the statutory exemption which permits certain out-of-state organizations to operate bingo games and raffles in Virginia;
- Authorize localities to apply more rigid standards in their determination of eligibility of bingo applicants;
- Adopt reasonable regulation to ensure the integrity in the conduct of bingo games by establishing standards for the manufacture of bingo paper and cards so that supply inventory is controlled at the outset of each game;
- Prohibit the playing of "instant bingo";
- Prohibit charitable organizations from leasing equipment, supplies, or a building from professional bingo operators;
- Prohibit lessors of bingo halls from participating in the conduct, management, or operation of bingo games;
- Establish statutory methods to determine fair market rental values;
- Increase the gross receipts that can be derived from "instant bingo" in order to increase the return to charities;
- Increase the days per week allowed for the playing of bingo from two to three to allow more charities to participate and to increase the return to the charitable organization;
- Specify the local government official responsible for the enforcement of bingo laws; and
- Adopt the North American Gaming Regulators Association's (NAGRA) standards on bingo.

In addition, Ken Thorson, director of the Lottery Department, cautioned the joint subcommittee that (i) regulation of any form of legalized gambling is an uphill struggle to maintain the integrity of the game, (ii) ensuring the security of pull-tabs is expensive and not consistent with profit motive, and (iii) casino nights, while innocent fun, do have ramifications involving the participation of Native Americans in gaming activities in competition with the state.

October 28, 1993, Richmond

Chairman Colgan opened the third meeting of 1993 by indicating that it was not true that the joint subcommittee was planning to do away with bingo, but was instead attempting to ensure that bingo is played within the law. He indicated that the purpose of bingo is to serve charities and not to make bingo operators rich.

The joint subcommittee heard testimony from several members of NAGRA concerning their states' experience with charitable gaming. The charitable gaming programs in these states share three principal characteristics. First, charitable gaming is regulated by a state regulatory agency, as opposed to local regulation as is done in Virginia. Statewide regulation includes the proper funding to ensure that all aspects of bingo are adequately covered. Second, owners of commercial bingo halls are removed from all operation and management of bingo games—they must be landlords only, with no additional strings attached. Third, a comprehensive licensing program has been adopted, including the licensure of bingo supply manufacturers, distributors, professional employees, and the charitable organizations themselves. The Internal Revenue Service spokesman indicated that one problem for his agency is that there is no centralized place in Virginia to get information concerning charitable gaming. As a result, information obtained is often unreliable and hinders the conduct of IRS investigations and hence their assistance to Virginia.

The next meeting of the joint subcommittee is scheduled for November 16 in Richmond. At this meeting, the subcommittee will formulate legislative recommendations.

The Honorable Charles J. Colgan, *Chairman*
Legislative Services contact: Maria J.K. Everett



HJR 695: Joint Subcommittee Studying the Virginia Public Procurement Act

September 29, 1993, Richmond

The joint subcommittee, continued by the 1993 Session of the General Assembly, held its first meeting of 1993 to receive the report of the Procurement Advisory Group, chaired by the director of the Division of Purchases and Supply. The group was established by HJR 694 to make recommendations relating to Virginia Correctional Enterprises' (VCE) product line, including a review of quality, pricing, and operational issues. Based

on the responses from 72 agencies of the Commonwealth, agencies of other states, and discussions with VCE, the Procurement Advisory Group made the following recommendations.

Group Recommendations

Operations:

- VCE should have to bid competitively on agency/institution requirements for furniture and related products that exceed \$25,000.
- An independent review process should be created, based on established criteria, to resolve conflicts between agencies and VCE regarding release from VCE.
- Customer service personnel must make increased efforts to ensure that information provided to customers is timely, accurate, and reliable.
- Account representatives must become better informed on products, services, and customer order status and provide consistently accurate information.
- VCE should consistently apply costs of operations, including buildings, equipment, and personnel, to all manufacturing operations.
- VCE should study distribution systems to increase handling and delivery efficiencies by permitting direct shipment of products from manufacturing locations instead of through a central warehouse.
- VCE, in conjunction with the Division of Purchases and Supply, should determine agency printing needs to refine a business plan that maximizes capacity.

Products:

- VCE should broaden opportunities to manufacture and sell labor-intensive parts to private industry for profit.
- Furniture product lines should be limited to the current catalog and price list.
- VCE should reduce the number of industries they are involved in and focus only on products that can consistently meet established standards for quality and timely delivery at a competitive price.
- Product prices must correspond to quality standards.

Quality:

- A quality evaluation and testing procedure should be established for office furniture that coincides with private industry standards.
- Products that are potentially a safety hazard should be tested by UL and BIFMA standards (e.g., trestle tables, systems furniture).
- Quality control responsibilities should be assigned to individuals trained in the manufacture of institutional furniture at various quality levels.

The Procurement Advisory Group concluded that some form of oversight is necessary to ensure that the interests of VCE and its customers are equitably maintained. As a result, the group also recommended a VCE advisory committee be established to annually review and approve new products and/or services, to establish a fair market price for all approved products and/or

services, and to evaluate the level and quality of products and customer services.

Committee Concerns

In response to the recommendations of the Procurement Advisory Group, several concerns were raised by the joint subcommittee and VCE relating to the participation of legislative members in the oversight committee, legislation passed by the 1993 Session of the General Assembly that requires the Department of Corrections to involve more inmates in work programs while incarcerated, competition with private enterprise, and review of the recommendations by institutions of higher education before formal action is taken by the joint subcommittee. The joint subcommittee, by consensus, acknowledged that improvements by VCE have been made since the study began.

Next Meeting

The next meeting of the joint subcommittee is scheduled for December 14, 1993, at which time legislative recommendations will be formulated.

The Honorable Joan H. Munford, *Chairman*
Legislative Services contact: Maria J.K. Everett



SJR 240: Select Committee to Review the Transportation Trust Fund

October 18, 1993, Richmond

Chairman Andrews announced the appointment of a 13-member advisory subcommittee, chaired by E. Morgan Massey, to assist the select committee in its deliberations. The committee and subcommittee members received a series of staff briefings on the evolution of Virginia's transportation revenue allocation system, proposals made by VDOT under SJR 188 for change in that system, and the impact of hypothetical revenue increases on the SJR 188 recommendations.

The full committee and the advisory subcommittee will each hold meetings on November 16 in conjunction with the annual state transportation conference at Virginia Military Institute. The advisory subcommittee will meet at 10:00 a.m. in Lejeune Hall, and the full committee will meet at 1:30 p.m., also in Lejeune Hall.

The Honorable Hunter B. Andrews, *Chairman*
Legislative Services contact: Alan B. Wambold



HJR 652: State Water Commission Study of Small, Private, Investor-Owned Water Systems

September 13, 1993, Richmond

The 1993 Session of the General Assembly requested the State Water Commission to study the operation of small, private, investor-owned and homeowner-association-operated water systems. Specifically, the commission was asked to (i) analyze the component expenses of the overall costs of providing drinking water, (ii) examine ways to ensure system owners are financially capable of operating such systems, and (iii) determine what alternatives should be available to customers in instances of abandonment or where operations fail to provide safe drinking water. The commission's agenda for its initial meeting included (i) a staff briefing on the issues raised in the resolution, (ii) testimony of officials of agencies charged with the responsibility of regulating private water companies, and (iii) presentations by affected parties and representatives of industry.

Background

The executive director of the Housing Study Commission had expressed her concern, in 1992, that a number of manufactured home park (MHP) operators were intentionally limiting the number of residents to fewer than 25, in order to avoid regulation by the Health Department. She suggested that the threshold be lowered so that the MHPs that serve smaller resident populations would be subject to the regulatory authority of the Health Department.

A related concern was raised by Delegate Davies, who testified that developers and homeowners associations were finding compliance with the federal Safe Drinking Water Act (SDWA) to be very expensive. He described a situation in which a system that had been constructed 20 years ago, in conjunction with the development of a residential subdivision, had fallen into disrepair because little maintenance had occurred in the intervening years, even though residents had been paying a water service fee. Unfortunately for the residents, the fees had not been dedicated to the operation of the system.

These situations are indicative of a larger problem — the inability of many small systems to meet the ever-increasing mandates of the SDWA. In response to this situation, the federal government and a number of states are considering measures to ensure the "viability" of small systems. A viable system is one which is self-sustaining, has the commitment from management, and can demonstrate a financial, managerial, and technical capability to reliably meet performance standards over the long term.

State Regulation of Private Investor-Owned Water Systems

At the state level, the operation of private, investor-owned water systems is regulated by the State Health Department and the State Corporation Commission (SCC). A major problem is the increasing number of regulations being added to the SDWA, which place a financial and operational burden on small waterworks. However, by law, neither the Environmental Protection Agency (EPA) nor the states can consider the financial impact of their regulations on small systems.

Health Department

The Health Department is limited in its authority to address the viability of waterworks. It can only assure that when the water system is proposed, it is designed, constructed, and operated in a manner that protects the public health. In 1980, the department was authorized by statute to require waterworks owners to post bond or deposit funds in order to ensure the continued operation of the waterworks in instances of abandonment by a system owner. However, the department found that no bonding company would provide such coverage for environmental health issues. A negative reaction to the escrow requirement, combined with the unavailability of such coverage, resulted in the agency not requiring owners to demonstrate financial responsibility. The department is again considering requiring the maintenance of an escrow account, but has postponed any final action pending the outcome of the commission's deliberations.

The Health Department recommends that:

- The General Assembly ask Congress to consider the economic impact of regulations on both small and large waterworks.
- The commission continue to study the viability issue. If a decision is made to develop economic viability criteria the department would like to play a role in establishing such criteria.
- Additional funds be provided to the Virginia Water Supply Revolving Fund. These funds would then be allocated to those local governments willing to take over the operations of failing investor-owned waterworks.
- The General Assembly amend the statute authorizing the fund to allow for signature loans, in amounts not to exceed \$40,000.

For water systems not currently regulated, the department recommends:

- Amending the *Code* to allow local governments to regulate small systems through local ordinances. To assure conformity the department would be given authority to establish minimum criteria.
- That the commission consider prohibiting the construction of drinking water systems that serve multiple connections unless they meet the current definition of waterworks (15 connections or 25 people).

State Corporation Commission

The SCC regulates private water companies as public utilities and currently oversees the operation of 70 water companies, a

majority (59 percent) of which serve 200 or fewer customers (the SCC defines customer as the person who has actually paid the utility bill). The agency's jurisdiction extends to those privately owned companies serving 50 customers or more that began operation after January 1, 1970. These companies must receive a certificate of Public Convenience and Necessity, which gives them the exclusive right to operate within an agency-delineated area. The companies are subject to the entire range of regulatory authority of the SCC, including rate and quality of service requirements.

Companies serving fewer than 50 customers are not defined as public utilities and therefore are not subject to SCC regulatory jurisdiction, except that a company that serves 10 or more customers must receive SCC approval before abandoning service to the customers. When the SCC reviews an application for a certificate, it examines (i) the company's organizational structure to assure it will conduct its business as a public utility, (ii) whether the company is in good standing with the Health Department, and (iii) the reasonableness of the rate structure.

Water companies with revenues of less than \$1 million may increase their rates without public hearing, so long as they notify their customers 45 days before the date of the proposed increase. This abbreviated procedure is authorized under the Small Water or Sewer Public Utility Act. Under the provisions of this act a public hearing on the rate request must be held if requested by the smaller of 250 customers or 25 percent of the company's customers. The SCC also may initiate a hearing upon its own motion. The water utilities with revenue over \$1 million are subject to the same rate-making procedures as other public utilities, and, therefore, are prohibited from using the abbreviated rate-making process.

Problems associated with the operation of certificated water companies include frequent outages, the taste and odor of the water supply, inferior piping, limited water supply and storage capacity, an inability to raise capital for needed improvements, and a lack of operating capability. The SCC has the ability to respond to some of the service problems in using either rate or show-cause proceedings. It can order necessary improvements and has exercised its authority to fine companies for failure to comply with agency directives. The agency has a limited number of options in instances where a company does not comply with agency directives. It can revoke a certificate but the water company retains its assets, while the customers lose their water service. The SCC does not have the authority to place the company in receivership.

Problems Associated with the Operation of Small Water Systems

Property Owners

The commission heard testimony regarding the operation of water companies serving two residential subdivisions. Residents of both communities experienced serious problems with water quality and were faced with costly alternatives for improv-

ing service. In one case, property owners have endured poor water quality for six years, during which time the water system has grown nearly ten-fold.

System Owners

Several operators of private investor-owned systems presented their perspectives on issues surrounding the operation of small systems. The discussion focused on the inadequacy of systems constructed primarily to increase land sales — systems that are frequently poorly constructed, inadequately maintained, and unable to meet the demand resulting from further development.

According to one expert, four factors play a significant role in determining the success of a water system's operation. First, the original design of the system must take into account the prospects for growth and have the flexibility to adjust to changes in regulatory requirements. Second, owning and operating water systems is not a part-time activity. Third, the quantity of the water supply may change over time, and owners must plan and allow for capital expenditures and the hiring of qualified personnel to oversee the design and operation of the system. Finally, many small systems, due to the lack of full-time staff, are unable to maintain compliance with the SDWA.

The following recommendations were presented:

- Establish minimum standards, including an assessment of the financial strength of water system ownership;
- Require separate financial accounting of utilities from other business activities;
- Capitalize the state revolving loan fund and make it available to private systems;
- Increase state lab funding for water quality tests;
- Encourage regional management of small systems;
- Do not introduce significant legislation until efforts of professional associations and proposed changes in federal law have been considered; and
- Establish control over formation of unregulated systems through the adoption of minimum standards.

Costs of Providing Drinking Water

The federal government has recognized the financial impact that new drinking water requirements have had on the operation of water systems, particularly small systems, and has responded by proposing the creation of a drinking water revolving loan fund, patterned after the existing waste water revolving fund and similarly requiring a 20 percent state match. The U.S. Senate recently began work on an appropriation bill that allocates \$600 million for FY 1994, and \$1 billion for each of the next four years, to finance the revolving fund.

Further recommendations were offered by a representative of the Virginia Water Project, who discussed the cost of providing drinking water to a small service population and reiterated that many small systems (i) have inadequate financial and operational management, (ii) are operated by owners who either lack

the interest or the ability to manage these systems, and (iii) typically serve a low income population, and, therefore, have a limited capacity to generate the revenue needed to maintain the system. He concluded his remarks by recommending the following:

- Water systems serving between two and 15 connections should be regulated as a semipublic classification of waterworks. Such systems would be tested for bacteria and nitrates; however, if such systems install a class II well, they would be exempt from such testing.
- Funding for the Division of Consolidated Laboratory should be increased.
- Managerial and financial capacity (viability) should be a major criterion in the decision of whether to approve a permit for the operation of a water system. Such criteria should be developed by the Health Department in consultation with the SCC.
- All water systems should be required to establish escrow accounts to be used for necessary operation, maintenance, and capital improvements.
- The feasibility of periodic review and renewal of permits should be explored.
- Small nonconnected systems should fall under regional or cooperative management.

The Honorable A. Victor Thomas, *Chairman*
Legislative Services contact: Martin G. Farber



HJR 703: Joint Subcommittee Studying the Need for Limitation Periods for Complaints against Regulators

September 21, 1993, Richmond

Convening its initial meeting of 1993, the joint subcommittee was provided with an overview of the Department of Professional and Occupational Regulation, the focus of the study, and its regulatory authority over its regulants. Additionally, the subcommittee heard from the director of the department concerning its investigative and enforcement activities.

Department Activities

The Department of Professional and Occupational Regulation (formerly the Department of Commerce) functions primarily through a structure of regulatory boards made up of persons appointed by the Governor. The essential duties of these boards are to (i) establish minimum standards to obtain a license, (ii) maintain standards of conduct for license holders, and (iii) discipline license holders who violate laws or regulations per-

taining to their business or occupation. The department, through its profession-specific regulatory boards, oversees the registration, certification, and licensure of 21 professions and occupations, ranging from accountants and real estate salespersons to barbers and branch pilots. The department provides professional licensing and regulation to more than 220,000 Virginians, affects the ability of more than 40 percent of the Virginia workforce to earn a living, and resolves consumer complaints for more than 4,200 people annually.

Regulants of the department are subject to disciplinary actions, including fines and suspension or revocation of licenses for violations of Title 54.1 and regulations promulgated thereto. Regulants are required to retain transactional records and documentation for a term of years ranging from one to five, although such transactions may give rise to disciplinary actions by the department past the record retention date. Title 54.1 is silent on the issue of a limitation period for filing complaints against department regulants. This is the issue to be addressed by the joint subcommittee.

In the last two years, 1,800 complaints were received by the department against persons regulated by its various boards. A sampling of 60 complaints revealed that the average time from the transaction which gave rise to the complaint to the time when the complaint was filed with the department was 11 months in fiscal year 1992 and six months in fiscal year 1993. The majority of complaints were against contractors and real estate agents.

Other Regulatory Agencies' Experience

As a basis for comparison, other state regulatory agencies with missions comparable to the department's were examined. These agencies are the Department of Agriculture and Consumer Affairs, the Virginia State Bar, and the Department of Health Professions.

The Department of Agriculture and Consumer Services (DACS) has regulatory authority under the Consumer Protection Act (§ 59.1-200 et seq.) and in addition, is responsible for the regulation of charitable solicitations, health spas, membership campgrounds, travel clubs, extended service contract providers, credit service businesses, and cemeteries. Generally, record retention requirements for these programs is for the term of the contract between the consumer and the regulant, although disciplinary action by DACS may be brought years after the occurrence that gave rise to the complaint. DACS representatives reported that they observe no limitation period, statutory or otherwise, for complaints against their regulants, although the statute of limitations for tort actions or other exigencies may have occurred which preclude the agency from opening an investigative file based on a complaint. The agency reported further that an independent evaluation is conducted after a complaint is filed to determine whether a statutory or regulatory violation has occurred.

The Virginia State Bar (VSB) is responsible for the licensure and discipline of attorneys. Like other agencies outlined above,

the VSB has no statute of limitations for complaints against its regulants. The VSB reported that there is an advisory legal ethics opinion on the issue of record retention by licensed attorneys which indicates that except for trust accounts (five year retention required) attorneys are urged to keep records for as long as required by their malpractice carriers. Additionally, the VSB advises its regulants that there is no statute of limitations for complaints against them.

The Department of Health Professions (DHP) is responsible for the licensure of health professionals, including physicians, dentists, psychologists, and social workers. As with DACS, DHP has no limitation period for complaints and may initiate disciplinary action against one of its regulants years after the conduct complained of occurred. DHP does not consider the age of a case as a per se reason not to go forward. The agency reported that like DACS, an independent evaluation is conducted after a complaint is filed to determine whether a statutory or regulatory violation has occurred.

Criminal and Civil Statutes of Limitation

Criminal and civil statutes of limitation are completely artificial time periods to establish absolute cut-off of claims and to prevent stale claims as a practical matter. From a policy perspective, a balance has been struck between the right of a claimant to bring an action and the protection of a defendant against a stale claim. In a criminal context, there is no statute of limitation for felony crimes, and, with misdemeanors, the statute of limitations ranges from one to five years according to the conduct. In a civil context, actions are brought to enforce private rights of action and have several statutes of limitation based on the conduct complained of. Section 8.01-231 of the *Code* specifies that on the civil side, statutes of limitation **do not** run against the Commonwealth.

Issues for Consideration

As part of its study, the joint subcommittee will consider the following issues:

- Whether a statute of limitation is needed.
- The number and disposition of complaints filed and the average time span from the transaction that caused the complaint to the filing of the complaint.
- The relationship between record-keeping requirements and the initiation of disciplinary action.
- If a statute of limitation was established, how far it should extend (should it apply to all regulatory agencies, and should a different statute of limitation be established based on the type of transaction?).

Next Meeting

The joint subcommittee scheduled a meeting for November 8 in House Room 4 of the Capitol in Richmond.

The Honorable Jean W. Cunningham, *Chairman*
Legislative Services contact: Maria J.K. Everett



SJR 241: Joint Subcommittee Studying Privatization of Certain State Government Functions

September 21, 1993, Richmond

The second meeting of the joint subcommittee included discussion of current state privatization efforts, remarks from the Auditor of Public Accounts and the State Internal Auditor regarding the costs of state services, and presentations from private sector businesses that offer privatization opportunities to governments.

State Privatization

Staff informed the subcommittee that there appears to be no state policy in place that directs agencies with regard to privatization, or contracting out, of government functions. Privatization is taking place on a piecemeal basis and varies considerably from agency to agency.

The director of the Department of Medical Assistance Services (DMAS) addressed the subcommittee and was able to provide numerous examples of privatization efforts within DMAS. A few of the functions for which DMAS contracts out are pre-admission screening for nursing homes, drug utilization review, financial audits of nursing homes, third party recovery, and claims processing. The director explained that his department not only contracts out with the private sector but also with other state agencies. When asked how DMAS decides which functions to farm out, the director stated that a cost/benefit analysis is performed, and only those functions that can be performed better and more cheaply are considered.

Measuring Government Costs

The Auditor of Public Accounts explained to the subcommittee that the state has three statewide accounting systems. The Commonwealth Accounting and Reporting System (CARS) serves as the appropriation control mechanism, general ledger, disbursement and receipts journals, and checkbook. This is the official accounting record of the Commonwealth and all state agencies and institutions must record accounting activity on this system. The other two systems are the Commonwealth Payroll System (CIPPS) and Fixed Assets Accounting System (FAACS). In addition, there are agency-based systems that meet an agency's information needs and normally provide unique data needs for either agency management or federal grant reporting. Most agencies develop these systems when they require information in greater detail than is available from the statewide systems.

According to the Auditor of Public Accounts, these accounting systems may be adequate for determining the costs of a government activity, depending on how the activity is defined. For example, while direct cost information is always available, the indirect costs of an activity may not be separated out for a particular activity if it is not an agency's major activity. It was also pointed out that when comparing costs, it is important to remember that privatizing an activity will not eliminate all of the indirect costs associated with that activity.

The State Internal Auditor informed the subcommittee that statewide efforts are underway to address the performance measurement element of government services in an attempt to generate sounder decisions about continuing, eliminating, or redesigning state activities. With regard to determining the true costs of providing services, the State Internal Auditor stated that agencies need more direction on how this should be done.

Private Sector Presentations

There is considerable interest in the private sector for business opportunities resulting from the privatization of government activities. The private sector argues that during this time of increasing service demands and budget constraints, it often makes sense to privatize. It is argued that privatization can result not only in reduced government expense, but also in improved service to the public.

A representative of Lockheed IMS spoke to the subcommittee about the many services provided by her company to over 140 government agencies nationwide. She spoke in detail about her company's efforts in child support enforcement, which include payment processing, operation of district offices, collections, and medical support.

Also addressing the subcommittee was the president of Tascor, a management services company. Tascor was formed as a joint business venture of the Norrell and IBM Corporations to provide support services such as running an accounts payable department or a mailroom, providing secretarial and administrative support, and operating telephone services. Although Tascor has primarily provided services to other private sector businesses, it is interested in providing similar services to government.

Next Meeting

The next meeting of the subcommittee is tentatively planned for late November.

The Honorable Walter A. Stosch, *Chairman*
Legislative Services contact: Jeffrey F. Sharp



HJR 402: Joint Subcommittee Studying Procedural Aspects of Capital Litigation

September 28, 1993, Richmond

The agenda for the third meeting of the Joint Subcommittee Studying Procedural Aspects of the Trial, Appeal, and Collateral Proceedings of Capital Cases consisted of a continuation of the members' efforts to receive and evaluate presentations on specific issues identified for their consideration.

The Habeas Corpus Reform Act of 1993

Staff presented the subcommittee with an outline of the provisions of the Habeas Corpus Reform Act of 1993, Senate Bill 1441 pending before Congress, and sponsored by Senator Joseph Biden of Delaware. While the fate of the so-called "Biden Bill" is certainly unclear, Chairman Woodrum felt that it was important that the subcommittee be apprised of the components of that bill because of its potential impact upon the work of the HJR 402 subcommittee. The members were given a brief explanation of provisions of the bill, which set certain filing deadlines for federal habeas corpus actions, set standards for the grants of stays of execution in capital cases, and codify standards of review in collateral proceedings. The Biden Bill will also establish by statute the parameters for applying a new rule of law in a habeas corpus proceeding.

The subcommittee was also told how the Biden Bill will set limits on successive habeas corpus petitions, including capital cases. Particularly relevant to the work of the joint subcommittee is a provision of the bill that will expand federal habeas corpus jurisdiction in capital cases to include free-standing claims of newly discovered evidence. In addition, provisions for counsel in capital cases in state court—whether at trial, on appeal, or in collateral proceedings—were explained to the subcommittee. Finally, a summary of the sanctions for failure to comply with provisions of the bill were discussed.

Statewide Public Defender Office

The executive director of the Public Defender Commission presented the subcommittee with an estimate of the costs involved in establishing a statewide public defender office for the trial and appeal of capital cases. Those costs were projected to be approximately \$900,000 for the first year of operation and \$800,000 each year thereafter. Advocates of such a statewide public defender system argue that the true cost will actually be much less because of savings realized through the reduced cost of locally court-appointed counsel. Other potential advantages of such a statewide system include a concentration of higher level expertise and the availability of experienced investigators and mitigation experts.

Concerns raised about establishment of a statewide public defender for the trial and appeal of capital cases include the disparity of resources between such an office and local prosecutors' offices and the inherent conflict that would be created between the Capital Resource Center and the statewide public defender's office through claims of ineffective assistance of counsel in subsequent habeas corpus proceedings.

Judicial Forum to Consider Newly Discovered Evidence

The issue that originally sparked the creation of the joint subcommittee concerns the availability of a judicial forum to consider newly discovered evidence in capital cases. This issue arises because, at some point, a death row inmate will have exhausted all available judicial remedies through trial, appeal, and habeas corpus proceedings. If, after that time, evidence unrelated to a constitutional claim comes to light which establishes probable innocence, there is currently under Virginia and federal law no judicial forum in which such evidence may be presented. Accordingly, claim those who propose creation of such a forum, an innocent person may be put to death simply because of procedural bars to entry into the court.

Opponents of the proposal center their arguments around several points. First, they point out that, in fact, the prisoner is not left without a remedy; recourse to the governor for executive clemency is always available. Second, the opponents note that through the years of trial, appeal, and collateral proceedings, ample opportunity has been afforded to the prisoner to investigate and reinvestigate his case and present all evidence about it. The opponents also urge that should such a forum be made available, the potential for abuse is enormous. They project that death row inmates will continuously file and refile, one issue at a time, to indefinitely delay imposition of sentence, even though such claims may be patently frivolous.

The proponents state that the availability of executive clemency is simply not a reasonable alternative to judicial intervention. They note that the executive is an elected official working in a political climate and is under no constitutional or statutory obligation to grant clemency, no matter how powerful the evidence indicating innocence may be. They also argue that no matter how diligent the search for evidence or trial court error may be during the prior proceedings, it is always possible that evidence of innocence will not come to light until after all currently available judicial remedies have been exhausted. With the life of a potentially innocent prisoner arguably in the balance, they believe that outcome is simply intolerable.

Capital Sentencing Jury Instructions

The final issue reviewed by the subcommittee focused on the form of two different instructions used in Virginia courts in the sentencing phase of capital trials. One concerns the instruction on mitigation evidence and the other the verdict form. The mitigation evidence instruction question centers around two perceived problems: (i) the lack of a definition for mitigating

evidence, and (ii) the absence of a listing of mitigating factors. Advocates of change argue that the defendant is unfairly disadvantaged by not having mitigating circumstances specifically delineated and urge that a listing of all mitigating factors presented by the defendant is necessary for the jury to fully understand and properly consider the evidence. Opponents deny any such lack of fairness and point to several appellate court decisions which hold that, in fact, it is advantageous for the defendant not to be limited to a specific list of mitigating factors, thus allowing the jury to consider any evidence they feel is mitigating in nature.

Modifications are sought to the statutory verdict form because some feel that, contrary to the law, the form as written requires the jury to impose the sentence of death once one or more of the aggravating circumstances of vileness and future dangerousness are found. Those who disagree with that assertion point out that the courts, both state and federal, have time and again ruled that the verdict form is fair and does not place any such requirement upon the jury. Moreover, they point out that any change in the verdict form will trigger years of litigation to determine the appropriateness of any new form.

Upcoming Meetings

The subcommittee decided to have two additional meetings. The first will be another information-gathering session, which will focus on the following issues:

- The use of victim impact evidence.
- Appointment of investigators and other experts to aid capital trial defendants.
- The compensation of appointed counsel in capital cases.

The final meeting of the subcommittee will be a work session to determine what, if any, legislative proposals will be made.

The Honorable Clifton A. Woodrum, *Chairman*
Legislative Services contact: Frank S. Ferguson



SJR 201: Joint Subcommittee Studying Measures to Reduce Emissions from Coal-Carrying Railroad Cars

October 7, 1993, Norfolk

The joint subcommittee's second meeting of the 1993 interim was held in Norfolk to solicit public comment from area citizens affected by coal dust emissions. Although the subcommittee's focus since its inception has been on problems associated with fugitive coal dust from moving trains, Chairman Schewel noted that Tidewater residents had been voicing concerns for some

time about dust coming from a coal terminal at Lambert's Point. He acknowledged Senator Yvonne Miller as the catalyst for bringing the subcommittee to Norfolk.

Over 20 speakers addressed the panel, including representatives from Norfolk Southern Corporation, who provided members with a status report on the company's ongoing study of the issue.

Control Strategies Outlined

Noting that "significant reduction in material loss can be attained," a Norfolk Southern (NS) official outlined the company's findings from its study and its plans to control coal dust emissions.

The rail company has determined that a relatively minor percentage (15 percent) of coal types is estimated to produce almost all (90 percent) of the dusting problems. In addition, consultants have isolated the key factors associated with dust emissions. Among them: train and wind speed, surface temperatures, and the speed of trains when passing one another.

Some of the control strategies found to be effective mitigators of emissions include slope management of car loads (e.g., utilize a bread-loaf type configuration), use of surface binders, and management of operational stresses (e.g., reduce speeds of passing trains).

An NS official informed the subcommittee about its forthcoming agreement with a major Virginia coal producer to allow coal to be sprayed with a surface binder, or sealant (the agreement is necessary because NS does not own the coal it hauls). The experiment, which will cost \$500,000, will entail encrusting the top four inches of approximately 30,000 cars. The panel was told that installation of the facility will be completed by early spring, and spraying will begin in time for "dusting season."

The subcommittee will receive a written report from Norfolk Southern by the end of this year. Subcommittee members requested that staff provide a copy of the report to the Department of Environmental Quality.

Rail company representatives also addressed concerns about emissions from the Lambert's Point terminal. Officials testified that recently completed construction of a new unloading system will help to mitigate the problems associated with dust from the terminal. The system, which will involve placing some coal in a storage silo instead of keeping it in open rail cars, is expected to be operational in the near future.

Citizen Concerns

Many speakers at the hearing testified about the negative impact of coal dust emissions on their quality of life. Personal experiences related to the subcommittee by civic league representatives and area residents indicated that the constant presence of coal dust is a daily burden. It leaves a greasy black film

on cars, homes, and outdoor furniture, requiring repeated cleaning. Some witnesses displayed visual aids—including a home videotape—as illustrations of the problems created by the coal dust. In addition, the subcommittee was told that it is sometimes necessary to keep doors and windows closed and children indoors. Several speakers also expressed concern about the unknown and potentially harmful health effects of their exposure to coal dust.

Also testifying before the panel was a former regional director of the Air Pollution Control Board's Tidewater office. He told the subcommittee that the regional staff would like to enforce laws and regulations relating to emissions, but cannot do so because they are so vague as to be unenforceable. He also stated that an encrusting agent is the most reasonable and cost effective control technology currently available.

Future Plans

Requesting that NS officials let company executives know that the subcommittee is committed to addressing the problem, Chairman Schewel indicated that the panel would await the rail company's report, due by the end of this year, and would continue to monitor its efforts to control dust emissions.

The Honorable Elliot S. Schewel, *Chairman*
Legislative Services contact: Mark C. Pratt



SJR 274: Shenandoah National Park Committee

October 20, 1993, Washington, D.C.

The committee met with members of the Virginia Congressional delegation (Senators John Warner and Charles Robb and Representatives Bob Goodlatte, L.F. Payne, and Frank Wolf) and staffers from Congressional offices and relevant committees.

Background

Chairman Nolen explained to the delegation that years ago, the Commonwealth of Virginia deeded land in fee simple for the Shenandoah National Park to the federal government. At the time of the grant, the Commonwealth did not retain easements in the land that it deeded over. However, Virginia continued to operate and maintain the secondary roads in the park under the authority of special use permits issued by the U.S. Park Service to the Virginia Department of Transportation (VDOT).

A few years ago, the U.S. Park Service claimed that it had no authority to issue these special use permits to the Commonwealth and stopped doing so. Nonetheless, VDOT continued to maintain and operate the roads. Chairman Nolen acknowledged that VDOT's activities—such as clearing snow and filling potholes—may have been illegal without the appropriate permits. Although the committee is concerned about that fact, Virginia intends to continue maintaining and operating these secondary roads unless the U.S. Park Service bars VDOT's activity.

In order to maintain and operate these roads for their existing uses, VDOT needs additional park land for projects such as widening single lane roads and straightening dangerous curves. These projects are necessary to meet current safety standards, particularly on roads where school buses regularly travel. VDOT has determined that approximately 28 acres of park land—which includes the secondary roads as they exist today and the land required to improve them—is needed for the projects.

Federal Policy

U.S. Park Service policy in Shenandoah National Park is that Virginia may take park land if it is reimbursed to the federal government with land of equal or greater value. The committee believes that this arrangement is unfair to Virginia since Virginia gave the land for the park in the first place. Requiring the Commonwealth to reimburse the land forces Virginia to “buy back” its own property.

This unfairness is exacerbated in two ways. First, Virginia is required to deed the reimbursed land in fee simple to the federal government. In exchange, the Commonwealth only receives an easement in the federal park land. Second, unlike other federal parks where the U.S. Park Service—and not the state—maintains and operates the secondary roads, Virginia is willing to continue to maintain and operate the roads in Shenandoah National Park.

Suggested Solution

To alleviate the unfairness to the Commonwealth, Chairman Nolen asked the Congressional delegation to introduce and support federal legislation that deeds the necessary park land in fee simple to Virginia. Senator Nolen pledged that the roads would only be improved to meet current safety standards for their existing uses, that the Commonwealth would cooperate with the U.S. Park Service in determining the minimum amount of land necessary for any project, and that the land would revert to the federal government if it were ever used for anything more than VDOT's maintenance and operation for existing uses.

The Congressional delegation suggested that the committee secure a commitment from the General Assembly and the Governor that contains the committee's pledges with regard to the land. Upon receipt of those commitments, the Congressional delegation would, in turn, introduce the necessary federal legislation and gather support for its passage.

The Honorable Frank W. Nolen, *Chairman*
Legislative Services contact: Alan B. Wambold



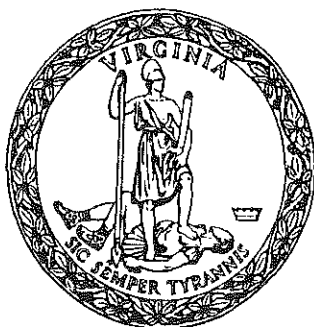
Subscriptions Available

Beginning with the 1994 volume, the *Legislative Record* will be available to the public by annual subscription. The *Legislative Record*, which reports on the deliberations of legislative subcommittees and commissions during the interim between sessions of the Virginia General Assembly, is published seven times per year, monthly from June through December.

Subscription rate is \$20 per year, which includes delivery by first-class mail. Individual issues, subject to availability, may be purchased at \$3 each, also including postage. To subscribe or to obtain further information, contact April Doggett, Division of Legislative Services, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Phone: 804/786-3591; Fax: 804/371-0169.



The Legislative Record summarizes the activities of Virginia legislative study commissions and joint subcommittees. Published in Richmond, Virginia, by the Division of Legislative Services, an agency of the General Assembly of Virginia.



E.M. Miller, Jr. *Director*
R.J. Austin *Manager, Special Projects*
K.C. Patterson *Editor*
James A. Hall *Designer*

Special Projects
Division of Legislative Services
910 Capitol Street, 2nd Floor
Richmond, Virginia 23219
804/786-3591

The Legislative Record is also published in *The Virginia Register of Regulations*, available from the Virginia Code Commission, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219. Notices of upcoming meetings of all legislative study commissions and joint subcommittees appear in the Calendar of Events in *The Virginia Register of Regulations*.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF EMERGENCY SERVICES

† Policy of Nondiscrimination on the Basis of Disability

The Department of Emergency Services (VDES) does not discriminate on the basis of disability in access to employment or in its programs and activities. The VDES Coordinator for the Americans with Disabilities Act and 504 has been designated to coordinate compliance with the nondiscrimination requirements contained in section 35.107 (28 CFR 35.107) of the Department of Justice regulation implementing Title II of the Americans with Disabilities Act. Information concerning the provisions of the Americans with Disabilities Act and the rights provided thereunder are available from this agency's Americans with Disabilities Act/504 Coordinator, Agnes L. Parrett, 310 Turner Road, Richmond, Virginia 23225, telephone (804) 674-2494 or TDD (804) 674-2417

DEPARTMENT OF ENVIRONMENTAL QUALITY

Air Division

† Public Meetings: Scheduling of Applications for Federal Operating Permits

The Department of Environmental Quality has scheduled public meetings to solicit opinions on the scheduling of required applications for federal operating permits. Such scheduling is required by the Virginia Regulations for the Control and Abatement of Air Pollution, §§ 120-08-0501, 120-08-0502, 120-08-0504, and 120-08-0511. These provisions are part of Rule 8-5 (§§ 120-08-0501 through 120-08-0525) on federal operating permits, adopted by the State Air Pollution Control Board in June 1993.

These provisions require major sources to apply to the Department of Environmental Quality for federal operating permits between September 1994 and November 1995, on a schedule to be determined by the board. The schedule is to be published by January 15, 1994 (§ 120-08-0504 C 1). Initial issuance of federal operating permits is to take place over the three years between November 1994 and November 1997 (§ 120-08-0511 B 1), at a rate of approximately one third of the total number of permits each year.

No regulatory changes are contemplated at this time, and

neither proposed nor existing regulations are under consideration in these public meetings.

Definition: "Title V Major Sources" include stationary sources with potential to emit 100 tons per year or more of any air pollutant other than hazardous air pollutants; stationary sources of hazardous air pollutants with potential to emit, in the aggregate, 10 tons per year or more of any hazardous pollutant or 25 tons per year or more of any combination of hazardous pollutants; and, for the Northern Virginia ozone nonattainment area, sources of volatile organic compounds or oxides of nitrogen with potential to emit 50 tons per year or more.

Public Comment and Comment by Affected Sources

The Department of Environmental Quality solicits views with respect to timing of operating permit applications. The following questions may assist in framing views.

1. Would companies with more than one source subject to Rule 8-5 be able to apply for federal operating permits in a group or would they prefer to spread out applications over 14 months?

2. Should the similarity of sources make a difference in addressing questions of priority of application? Should applications be solicited by SIC code to avoid competitive disadvantage?

3. Would random scheduling of applications be fair and appropriate under the circumstances?

4. People representing individual companies are invited to indicate whether their companies prefer to be among the first to submit permit applications.

Public Meeting Dates

The Department of Environmental Quality, Air Division has scheduled the following meeting dates and places around the Commonwealth in order that department staff may hear your views on these questions:

November 30, 1993 - 10 a.m. Rappahannock Public Library, Caroline and Lewis Streets, Fredericksburg.

November 30, 1993 - 11 a.m. Hampton Roads Planning District Commission, Regional Building, 723 Woodlake Drive, Chesapeake.

November 30, 1993 - 1:30 p.m. Richard Byrd Library, 7250 Commerce Street, Springfield.

November 30, 1993 - 3:30 p.m. Marine Reserve Center,

General Notices/Errata

5375 Peters Creek Road, N.W., Roanoke.

December 2, 1993 - 1 p.m. Washington County Board of Supervisors, Executive Meeting Room, 205 Academy Drive, Abingdon.

December 2, 1993 - 1 p.m. State Water Control Board Office, Board Room, 1st Floor, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen.

December 9, 1993 - 2 p.m. Central Virginia Community College, Amherst Building Auditorium, 3506 Wards Road, Lynchburg.

Public Comment Deadline: December 28, 1993

In addition to, or instead of attending a public meeting, you are invited to send your comments on this subject to the department in writing. Comments should be postmarked no later than December 28, 1993, and addressed to:

Virginia Department of Environmental Quality
Air Division
Office of Permit Evaluation
Attn: Title V Application Schedule
P. O. Box 10089
Richmond, Virginia 23240

VIRGINIA CODE COMMISSION

NOTICE TO STATE AGENCIES

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you do not follow-up with a mailed copy. Our FAX number is: 371-0169.

FORMS FOR FILING MATERIAL ON DATES FOR PUBLICATION IN THE VIRGINIA REGISTER OF REGULATIONS

All agencies are required to use the appropriate forms when furnishing material and dates for publication in The Virginia Register of Regulations. The forms are supplied by the office of the Registrar of Regulations. If you do not have any forms or you need additional forms, please contact: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

FORMS:

NOTICE of INTENDED REGULATORY ACTION -
RR01
NOTICE of COMMENT PERIOD - RR02
PROPOSED (Transmittal Sheet) - RR03
FINAL (Transmittal Sheet) - RR04

EMERGENCY (Transmittal Sheet) - RR05
NOTICE of MEETING - RR06
AGENCY RESPONSE TO LEGISLATIVE
OR GUBERNATORIAL OBJECTIONS - RR08
DEPARTMENT of PLANNING AND BUDGET
(Transmittal Sheet) - DPBRR09

Copies of the Virginia Register Form, Style and Procedure Manual may also be obtained at the above address.

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.



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 - 9 a.m. – Open Meeting**
Washington Building, 1100 Bank Street, Board Room, Room 204, Richmond, Virginia. ♿

At this regular meeting, the board plans to discuss legislation, regulations, and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Roy E. Seward, Secretary to the Board, VDACS, Room 211, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD. ☎

* * * * *

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.

Virginia Sweet Potato Board

† **December 8, 1993 - 6:30 p.m. – Open Meeting**
Town House Restaurant, Rt. 126, Onancock, Virginia. ☒

The board will meet to discuss marketing, promotion, research and education programs for the state's sweet potato industry. Any person who needs any accommodation in order to participate at the meeting should contact J. William Mapp at least five days before the meeting so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: J. William Mapp, Program Director, Box 26, Onley, VA 23418, telephone (804) 787-5867.

STATE AIR POLLUTION CONTROL BOARD

† **November 30, 1993 - 7:00 p.m. – Public Hearing**
Northwood High School Auditorium, Saltville, Virginia.

This public hearing has been requested by local residents to receive comments on the proposed permit to allow Three Season, Inc., to modify their soil remediation facility in Saltville, Virginia.

Contact: Michael D. Overstreet, Department of Environmental Quality, Air Division, 121 Russell Road, P. O. Box 1190, Abingdon, VA 24210, telephone (804) 676-5582.

* * * * *

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

Calendar of Events

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 many 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.

* * * * *

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 Sabastanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

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† **January 6, 1994 - 7 p.m. – Public Hearing**
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

† **January 31, 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 and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN – Appendix E, Public Participation Guidelines)**. The regulation amendments revise the public participation procedures to: (i) change and expand the information provided in the notice of intended regulatory action and notice of public comment; (ii) clarify the types of meetings and hearings to be held; (iii) set out and specify the methods and policy for gaining public input and participation in the regulatory adoption process; (iv) and update other provisions to be consistent with the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7-1 and 10.1-1308 of the Code of Virginia.

Written comments may be submitted until close of business January 31, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, 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

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benefits of the proposal.

Contact: Robert Mann, Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4419.

ALCOHOLIC BEVERAGE CONTROL BOARD

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.

ALCOHOL SAFETY ACTION PROGRAM - MOUNT ROGERS

† **December 1, 1993 - 12:30 p.m.** – Open Meeting
Oby's Restaurant, North Main Street, Marion, Virginia. ☐

The Mt. Rogers ASAP Board of Directors meets every other month to conduct program business. The order of business at all regular meetings shall be as follows: (i) call to order; (ii) roll call; (iii) approval of minutes; (iv) unfinished business; and (v) new business.

Contact: J. L. Reedy, Jr., Director, Mt. Rogers ASAP, 1102 A North Main St., Marion, VA 24354, telephone (703) 783-7771.

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

† **November 30, 1993 - 2 p.m.** – Public Hearing
Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia.

† **January 29, 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 Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed amendments is to adjust fees contained in current regulation, establish registration requirements for limited liability companies, and revise minimum standards for property surveys.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

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

† **December 2, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia. ☐

A meeting to (i) approve minutes from October 12, 1993, meeting; (ii) review correspondence; (iii) review regulations; and (iv) review enforcement files.

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

Board for Landscape Architects

† **November 30, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, Virginia. ☐

A meeting to (i) approve minutes of May 21, 1993 meeting; (ii) review applications; and (iii) revise applications.

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

Board for Land Surveyors

† **December 1, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, Virginia. ☐

A meeting to (i) approve minutes of September 8, 1993, meeting (ii) review applications; and (iii) review correspondence.

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

Board for Professional Engineers

† **December 1, 1993 - 1 p.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad St., Richmond, Virginia. ☐

A meeting to (i) approve minutes from October 12, 1993, meeting (ii) review applications; (iii) review correspondence; and (iv) review regulations.

Contact: Willie Fobbs, III, Assistant Director, 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

† **November 29, 1993 - 8:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad St., Conference Room 4, Richmond,
Virginia. ☐

An exam review and construction workshop.

Contact: George Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8544 or (804) 367-9753/TDD ☎

† **December 6, 1993 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,

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3600 W. Broad St., 4th Floor, Richmond, Virginia.

A meeting to (i) review applications; (ii) review correspondence; (iii) review and disposition of enforcement files; (iv) conduct a regulatory review work session; and (v) conduct routine board business.

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.

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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 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 ☎

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† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

† **January 31, 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 Chesapeake Bay Local Assistance Board intends to amend regulations entitled: **VR 173-01-00:1. Public Participation Guidelines**. The purpose of the proposed amendments is to ensure interested persons information necessary for meaningful, timely input throughout the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2103 of the Code of Virginia.

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

Central Area Review Committee

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

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

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 ☎

CHILD DAY-CARE COUNCIL

† **December 9, 1993 - 9:30 a.m.** – Open Meeting
Theater Row Building, Lower Level, Conference Room 1, 730 E. Broad St., Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss issues, concerns and programs that impact child day centers, camps, school age programs, and preschool/nursery schools. The public comment period will be 10 a.m. Please call ahead of time for possible changes in meeting time.

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

INTERDEPARTMENTAL REGULATION OF CHILDREN'S RESIDENTIAL FACILITIES

Coordinating Committee

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.

COMPENSATION BOARD

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 ☎

CONSERVATION AND RECREATION FOUNDATION

† **December 8, 1993 - 1 p.m.** – Open Meeting
General Assembly Building, 4th Floor West Conference Room, Richmond, Virginia. ☎ (Interpreter for deaf provided upon request)

A general business and educational session.

Contact: Art Buehler, Division Director, Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-5046 or (804) 786-2121/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

† **January 31, 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 Conservation and Recreation intends to amend regulations entitled: **VR 217-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation (department) to prescribe rules and regulations necessary and incidental to the performance of duties or execution of powers conferred by law; and to promulgate regulations pursuant to the Administrative Process Act to carry out the provisions of Subtitle I of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that

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interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

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

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

Board of Conservation and Recreation

† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

† **January 31, 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 Conservation and Recreation intends to amend regulations entitled: **VR 215-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such

guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-107 of the Code of Virginia authorizes the Board of Conservation and Recreation (board) to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1, (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

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

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

Soil and Water Conservation Board

† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Board Room, 4900
Cox Road, Innsbrook, Glen Allen, Virginia.

† **January 31, 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 Soil and Water Conservation Board intends to amend regulations entitled: **VR 625-00-00:1. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-502 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board (board) to promulgate regulations necessary for the execution of Chapter 5 (§ 10.1-603 et seq.) of Title 10.1 of the Code of Virginia. This authorization covers the Erosion and Sediment Control Law and its attendant regulations. Section 10.1-603.18 of the Code of Virginia authorizes the board to promulgate regulations for the proper administration of the Flood Prevention and Protection Assistance Fund which is to include but not be limited to the establishment of amounts, interest rates, repayment terms, consideration of the financial stability of the particular local public body applying and all other criteria for awarding of grants or loans under the Flood Prevention and Protection Assistance Fund Act (§ 10.1-603.16 et seq.). The Dam Safety Act under § 10.1-605 of the Code of Virginia requires the board to promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated (§ 10.1-604 et seq.). The Conservation, Small Watersheds Flood Control and Area Development Fund Act (§ 10.1-636 et seq.) authorizes the board to establish guidelines for the proper administration of the fund and provisions of Article 4.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new

provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-603.18, 10.1-605, and 10.1-637 of the Code of Virginia.

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

BOARD FOR CONTRACTORS

† **December 15, 1993 - 8 a.m.** – Open Meeting
Department of Professional and Occupational Regulation,
3600 W. Broad St., 4th Floor, Conference Room 4,
Richmond, Virginia.

A regular quarterly meeting of the board to address policy and procedural issues, review and render decisions on applications for contractors' licenses, and review and render case decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in executive session.

Contact: A. R. Wade, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8585.

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

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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)

† **December 15, 1993 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia ☐

A meeting to discuss matters as may be presented.

Contact: Ms. Vivian Toler, Secretary to the Board, 6900 Atmore Drive, 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.

BOARD FOR COSMETOLOGY

† February 10, 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 Cosmetology intends to repeal regulations entitled: VR 235-01-1. Public Participation Guidelines and adopt regulations entitled: VR 235-01-01:1. Public Participation Guidelines. The purpose of the proposed guidelines is to set procedures for the Board for Cosmetology to follow to inform and incorporate public participation when promulgating Cosmetology regulations.

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

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

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.

DISABILITY SERVICES COUNCIL

† December 10, 1993 - 1 p.m. - Open Meeting
Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, Virginia ☒

A meeting to discuss guidelines for the Rehabilitative Services Incentive Fund.

Contact: Allen Gouse, Deputy Commissioner, Department of Rehabilitative Services, 4901 Fitzhugh Avenue, Richmond, VA 23230, telephone (804) 367-0224, toll-free 1-800-552-5019, or (804) 367-0282/TDD ☒

DEPARTMENT OF EDUCATION (STATE BOARD OF)

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.

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† December 14, 1993 - 7 p.m. - Public Hearing
Snow date: December 16, 1993
Northside High School, 6758 Northside High School Road, Roanoke, Virginia.

† January 19, 1994 - 7 p.m. - Public Hearing
Snow date: January 25, 1994
Kenmore Middle School, 200 South Carlin Springs Road, Arlington, Virginia.

† January 20, 1994 - 7 p.m. - Public Hearing
Snow date: January 27, 1994
Hermitage High School, 8301 Hungary Spring Road, Richmond, Virginia

† January 29, 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 Education intends to adopt regulations entitled: VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel. The purpose of the

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proposed regulations is to include provisions for contractual agreements and hiring procedures. The regulations provide an overview of the contracting process for local school boards and their professional employees, definitions of relevant contract terms, and descriptions of essential contract elements are included within the appendix of the regulations. The regulations describe the employment of professional personnel as a process that rests with the local school board and the employee and sets forth the prototypes and contract elements as resources that local boards may use at their discretion in meeting the requirements of the employment process.

The proposed regulations are new regulations that are intended to replace VR 270-01-0042, which will be repealed. The proposed regulations reflect substantial changes over the previous section on contractual agreements. For the first time, all relevant terms are being described and an entirely new section on the uniform hiring of teachers is presented.

The specific provisions of the proposed regulations are in two parts and begin with a preamble describing who the parties are and that the hiring discretion is with the local school board. Part I includes (i) definitions of terms, including types of contracts and the personnel involved, (ii) the contract period and the form of the contract including sample prototypes of each type of contract and a listing of essential contract terms, (iii) the specific provisions of the annual contract, (iv) the specific provisions of the continuing contract, and (v) the specific provisions of the coaching contract. Part II includes (i) a discussion of the purpose of a uniform hiring process, and (ii) a three-phase hiring process with detailed descriptions of the benefits and requirements of each phase. The three-phase process establishes a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates establish minimum timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of a locality, and offer professional mobility for teachers.

Statutory Authority: §§ 22.1-16, 22.1-302, and 22.1-304 of the Code of Virginia.

Contact: Brenda F. Briggs or Charles W. Finley, Associate Specialists, Compliance Division, Department of Education, P. O. Box 2120, Richmond, VA, telephone (804) 225-2750, (804) 225-2747 or toll-free 1-800-292-3820.

† **January 27, 1994 - 8:30 a.m.** – Open Meeting
† **February 24, 1994 - 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.

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.

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 - HANOVER COUNTY

† **December 7, 1993 - 9 a.m. - Open Meeting**
Hanover Fire Company 5, Route 1004 at Route 301 N., Hanover, Virginia ☑

A meeting to include:

1. Presentation of Updated Hazardous Materials Emergency Response Plan.
2. Update on the Hazardous Materials Transportation

Vulnerability Study (HMTVSA) grant.

3. Case studies of Local Haz-Mat Incidents. Program - Pete Taylor.

4. Understanding Facility Contingency Planning Requirements - Tim Reid, Director of Regulatory Affairs, Chemtreat.

5. Old business/new business. Fifteen-minute discussion.

Contact: John F. Trivellin, CEM, Hazardous Materials Coordinator, P. O. Box 470, Hanover County, VA 23069, telephone (804) 798-8554 or (804) 730-6195.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **December 1, 1993 - 3 p.m. - Open Meeting**
Shawnee Fire Company, 2333 Roosevelt Blvd., Winchester, Virginia.

A general meeting.

Contact: L. A. Miller, Fire Chief, Winchester Fire & Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

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.

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† **January 6, 1994 - 7 p.m. - Public Hearing**
Department of Environmental Quality, Innsbrook Office, 4900 Cox Road, Glen Allen, Virginia.

† **January 31, 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 Department of Environmental Quality intends to adopt regulations entitled: **VR 304-01-01. Public Participation**

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Guidelines. The purpose of the proposed regulation is to replace existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act. Department of Environmental Quality has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, Virginia 23230. 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 facilities should contact Ms. Doneva Dalton, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 27, 1993.

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

Written comments may be submitted until 4 p.m. on January 3, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230. **Contact:** Cindy M. Berndt, Office of Regulatory Services, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

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.

VIRGINIA FIRE SERVICES BOARD

† **December 17, 1993 - 9 a.m. – Open Meeting**
Sheraton Park South, Moorefield Office Park, 9901 Midlothian Turnpike, Richmond, Virginia.

A business meeting to discuss training and fire

policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **December 16, 1993 - 10 a.m. – Open Meeting**
Sheraton Park South, Moorefield Office Park, 9901 Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† **December 16, 1993 - 9 a.m. – Open Meeting**
Sheraton Park South, Moorefield Office Park, 9901 Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **December 16, 1993 - 1 p.m. – Open Meeting**
Sheraton Park South, Moorefield Office Park, 9901 Midlothian Turnpike, Richmond, Virginia.

A meeting to discuss fire training and policies. The committee meeting is open to the public for their input and comments.

Contact: Anne J. Bales, Executive Secretary Senior, 2807 Parham Road, Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

FOOD SERVICE ADVISORY COMMITTEE

† **December 9, 1993 - 10 a.m. – Open Meeting**
Department of Housing and Community Development, Jackson Center, 501 N. Second St., Second Floor Conference Room, Richmond, Virginia ☒

A regular meeting. This committee meets at least once a year to discuss and recommend food service policy, regulation, and programmatic changes to the Commissioner of Health for implementation.

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Contact: John E. Benko, Division Director, Division of Food and Environmental Health, 1500 E. Main St., Suite 115, Richmond, VA 23218, telephone (804) 786-3559.

BOARD OF FORESTRY

† **January 13, 1994 - 9:30 a.m.** – Open Meeting
Marriott Hotel, 500 E. Broad Street, Richmond, Virginia

A general business meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P. O. Box 3758, Charlottesville, VA 22903-0858, telephone (804) 977-6555/TDD ☎

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

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.

† **January 5, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Conference Room 3, Richmond, Virginia ☎

A general board meeting.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

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.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **December 13, 1993 - 10 a.m.** – Open Meeting
Whitehall-Robins, 1407 Cummings Drive, Richmond, Virginia

† **December 13, 1993 - 3 p.m.** – Open Meeting
Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia

A business meeting. An informal dinner will begin at 7:30 p.m.

Contact: Susan R. Rowland, Assistant to the Commissioner, Department of Health, 1500 East Main Street, Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

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

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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.

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

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.

† January 25, 1994 - 9 a.m. - Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia

A monthly meeting.

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

BOARD FOR HEARING AID SPECIALISTS

† January 31, 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 Hearing Aid Specialists intends to repeal regulations entitled: **VR 375-01-01. Public Participation Guidelines** and

adopt regulations entitled: **VR 375-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations 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 hearing aid specialists in Virginia.

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

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

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

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

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

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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.

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† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Glen Allen, Virginia

† **January 31, 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 Historic Resources intends to amend regulations entitled: **VR 392-01-01, Public Participation Guidelines**. Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2202 of the Code of Virginia authorizes the Director of the Department of Historic Resources to adopt rules necessary for carrying out his powers and duties, including, at a minimum, criteria and procedures for nominating properties to the National Park Service for inclusion in the National Register of Historic Places.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new

provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

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

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

Board of Historic Resources

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.

† **December 8, 1993 - 10 a.m. – Open Meeting**
The Virginia Historical Society, 428 N. Boulevard, Richmond, Virginia ☒ (Interpreter for the deaf provide upon request)

A meeting to consider the following properties for listing on the Virginia Landmarks Register:

1. Rice's Hotel, Northumberland County (amendment).
2. Newport Historic District, Giles County.
3. West of the Boulevard Historic District, Richmond City and the removal of the Maupin-Maury House, Richmond City, from the Virginia Landmarks Register.

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎ .

† **January 6, 1993 - 7 p.m. –Public Hearing**
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Glen Allen, Virginia.

† **January 31, 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 Historic Resources intends to amend regulations entitled: **VR 390-01-01. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2205 of the Code of Virginia authorizes the board to adopt rules necessary for carrying out its powers and duties, including, at a minimum, criteria and procedures for designating historic landmarks and districts.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested

persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

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

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

State Review Board

† **December 7, 1993 - 10 a.m. – Open Meeting**
Virginia Historical Society, 428 N. Boulevard, Richmond, Virginia ☒ (Interpreter for the deaf provided upon request)

A meeting to consider the following properties for nomination on the National Register of Historic Places:

1. Rice's Hotel, Northumberland County (amendment).
2. Newport Historic District, Giles County.
3. West of the Boulevard Historic District, Richmond City .

Contact: Margaret T. Peters, Information Officer, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143 or (804) 786-1934/TDD ☎ .

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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.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **December 10, 1993** – Written comments may be
submitted until this date.

Notice is hereby given that the Virginia Housing
Development Authority intends to amend regulations
entitled: **VR 400-02-0017. Rules and Regulations for
HUD-Insured Home Equity Conversion Mortgage
Loans to Elderly Persons of Low and Moderate
Incomes.** The proposed amendments (i) increase the
origination fee charged to borrowers under the
Program from 1.0% of the maximum claim amount
(the lesser of the home's appraised value or the FHA
203(b)(2) mortgage insurance limit) to an amount not
to exceed the maximum amount permitted in the
federal regulations; (ii) change the maximum gross
family income limit for borrowers under the program
from 80% of area median family income to amounts
equal to the income limits in effect under or pursuant
to the Authority's Rules and Regulations for Single
Family Mortgage Loans to Persons and Families of
Low and Moderate Income; and (iii) restate the
definition of the term "area median family income" to
be the "applicable median family income" as defined
in Section 143(f)(4) of the Internal Revenue Code.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Contact: J. Judson McKellar, Jr., General Counsel, 601 S.
Belvidere St., Richmond, VA 23220, telephone (804)
782-1986.

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 ☎

DEPARTMENT OF LABOR AND INDUSTRY

Migrant and Seasonal Farmworkers board

† **December 8, 1993 - 10 a.m. – Open Meeting**
State Capitol, House Room 1, Richmond, Virginia ☒
(Interpreter for the deaf provided upon request)

A regular meeting of the board. The Complaint
Resolution Subcommittee will meet immediately after
the board meeting.

Contact: Marilyn Mandel, Director, Office of Planning and
Policy Analysis, Department of Labor and Industry,
Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219,
telephone (804) 786-2385 or (804) 786-2376/TDD ☎

LIBRARY BOARD

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

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.

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Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

† December 20, 1993 - 10 a.m. - Open Meeting
State Lottery Department, 2201 W. Broad St., Richmond, Virginia 23220 ☒ (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.

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MARINE RESOURCES COMMISSION

† **December 21, 1993 - 9:30 a.m.** – Open Meeting
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; and 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; and 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 ☒

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† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, Water Division, Board Room, 4900 Cox Rd., Innsbrook, Glen Allen, Virginia

† **January 31, 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 Marine Resources Commission intends to amend regulations entitled: **VR 450-01-0045. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with the 1993 amendments to the Administrative Process Act and conform with the other agencies in the Natural Resources Secretariat.

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

Contact: Robert W. Grabb, Chief, Habitat Management Division, P. O. Box 756, Newport News, VA 23607-0756 or toll-free 1-800-541-4646.

MATERNAL AND CHILD HEALTH COUNCIL

† **December 1, 1993 - 1 p.m.** – Open Meeting
Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, Virginia ☒ (Interpreter for the deaf

provided upon request)

The meeting will focus on improving the health of the Commonwealth's mothers and children by promoting and improving programs and service delivery systems related to maternal and child health, including prenatal care, school health, and teenage pregnancy.

Contact: Nancy Ford, School Health Nurse Consultant, 1500 E. Main St., Suite 137, Richmond, VA 23218-2448, telephone (804) 786-7367.

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

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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.

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† **January 28, 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 460-03-3.1102. Case Management Services: Preauthorization of Case Management for the Elderly.** The purpose of the proposed amendment is to streamline the Medicaid utilization control requirements imposed on agencies participating in the Case Management for the Elderly Pilot Projects by conforming the Medicaid requirements with those of the policy for the pilot projects imposed by the Long-Term Care Council.

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

Written comments may be submitted through January 28, 1994, to Ann E. Cook, Eligibility and Regulatory Consultant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 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.

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† **January 28, 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 460-03-3.1100, VR 460-02-3.1300, VR 460-04-8.12, VR 460-04-8.1500. DMHMR Community and Waiver Services.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations. The permanent regulations will remove certain administrative impediments to the effective and efficient implementation of mental retardation waiver services in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. They will also allow persons having conditions related to mental retardation to be served by providers under contract with the Department of Rehabilitative Services (DRS).

The parts of the State Plan for Medical Assistance affected by this action are: Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1

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A&B), Case Management Services (Supplement 2 to Attachment 3.1 A). The state-only regulations affected by this action are: Home and Community-Based Care Services for Individuals with Mental Retardation (VR 460-04-8.12) and Community Mental Health Services, Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The emergency regulations broadened the provider qualifications for persons with related conditions to include those providers contracted by DRS as habilitative service providers. The emergency regulations did not affect the amount or scope of services an individual may receive, did not affect the state's approved waiver for community services to persons with mental retardation, and did not impact on the quality of services being provided to the population. The key provisions of this proposed regulatory action are described below.

The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact (between the patient and provider) every 90 days, regardless of the case management service being offered, and clarify the frequency as once every 90 days rather than one within a 90-day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of day health and rehabilitation services have been removed. Additionally, changes are made to revise the existing definition of developmental disability and to rename the definition "related conditions" to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87. The prior authorization requirement for case management for this group is also being removed.

Another change clarifies coverage of day health and rehabilitation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to be qualified for Medicaid reimbursement for day health and rehabilitation services. Reference to two waivers and use of the Inventory for Client an Agency Planning (ICAP) have been removed because the Commonwealth is consolidating the two waivers into one waiver for renewal in 1993. The Commonwealth is also revising the assessment and will discontinue using the ICAP as the required assessment for MR Waiver Services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to

respond to concerns expressed in this area.

These proposed regulations modify the definition of some existing services and broaden the range of services which may be offered to individuals in the MR waiver by adding five new services: Personal Assistance, Assistive Technology, Environmental Modifications, Respite Care, and Nursing Services. Prevocational Services, previously included in Habilitation Services, has now been included under the service titled Day Support. The definition of the services and provider qualifications have been developed in conjunction with the MR Executive Workgroup and are a continuation of the effort initiated in the emergency regulations to remove impediments to the effective and efficient administration of services to persons with mental retardation.

While these regulations add five cheaper substitute services to the MR Waiver program, the cost savings will be offset by increased utilization. The increased utilization is limited by the current allocated general funds. Thus, no budget impact from the proposed regulations is expected.

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

Written comments may be submitted through January 28, 1994, to Chris Pruett, Manager, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 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.

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† **January 28, 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 460-04-8.900. Public Participation Guidelines**. The purpose of this proposal is to amend the agency's Public Participation Guidelines to be consistent with provisions of the Administrative Process Act.

Effective October 1984 the Department of Medical Assistance Services (DMAS) became subject to the Administrative Process Act. Because the State Plan is a "regulation" as defined in § 9-6.14:4 F of the Code of Virginia, amendments to it must be promulgated in accordance with the Administrative Process Act.

The Administrative Process Act (§ 9-6.14:7.1 et seq. of the Code of Virginia) requires the development and

use of Public Participation Guidelines by executive agencies. DMAS' Public Participation Guidelines became effective November 1, 1985, and were most recently revised effective April 1991.

The 1993 General Assembly-approved House Bill 1652 made numerous changes in the Administrative Process Act which were intended to improve and increase the public's opportunities to participate in the Commonwealth's executive agencies' rulemaking processes. These changes in the Act necessitate a modification to the DMAS' Public Participation Guidelines. Specifically, § 4 A is being modified regarding methods for soliciting the input of interested parties in the development of regulations.

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

Written comments may be submitted through January 28, 1994, to Roberta Jonas, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 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

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 ☎

Informal Conference Committee

† **December 3, 1993 - 9 a.m. - Open Meeting**
Fort Magruder, Route 60 East, Williamsburg, 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 ☎

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. ☒

Calendar of Events

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 ☎

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.

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **February 2, 1994 - 1 p.m. – Open Meeting**
Department of Mines, Minerals and Energy, 202 N. Ninth St., Room 829, Richmond, Virginia

A public meeting to receive comments on the

department's guidelines for public participation in its regulatory development process.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 692-3200.

VIRGINIA MUSEUM OF FINE ARTS

Collections and Executive Committees

† **December 14, 1993 - 2 p.m. – Open Meeting**
Virginia Museum of Fine Arts Auditorium, 2800 Grove Avenue, Richmond, Virginia ☒

A meeting to consider and approve art works as gifts, purchases, and loans.

Contact: Emily C. Robertson, Secretary of the Museum, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

† **November 30, 1993 - 2 p.m. – Open Meeting**
Virginia Employment Commission, 870 E. Main Street, Wythe Shopping Plaza, Wytheville, Virginia (Interpreter for the deaf provided upon request)

† **December 1, 1993 - 9:30 a.m. – Open Meeting**
Department of Alcoholic Beverage Control, 331 W. Main St, Abingdon, Virginia (Interpreter for the deaf provided upon request)

† **December 6, 1993 - 11 a.m. – Open Meeting**
Virginia Employment Commission, 1075 Spruce Street, Martinsville, Virginia (Interpreter for the deaf provided upon request)

† **December 9, 1993 - 10 a.m. – Open Meeting**
The Conference Room of the Pavillion, 1000 19th St., Virginia Beach, Virginia (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings with certified nurse aides. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

Special Conference Committee

† **December 6, 1993 - 8:30 a.m. – Open Meeting**
† **December 7, 1993 - 8:30 a.m. – Open Meeting**
† **December 10, 1993 - 8:30 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, Virginia (Interpreter for the deaf provided upon request)

A meeting to conduct an informal conference with certified nurse aides to determine if any action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Corinne F. Dorsey, Executive Director, 6606 W. Broad St., Richmond, VA 23230, 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 OUTDOORS FOUNDATION

† **December 17, 1993 - 10 a.m. – Open Meeting**
State Capitol, House Room 1, Richmond, Virginia

A general business meeting. Agenda available upon request.

Contact: Leslie H. Grayson, Acting Executive Director, P. O. Box 322, Aldie, VA 22001, telephone (703) 327-6118 or (804) 786-2121/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.

BOARD OF PHARMACY

† **December 8, 1993 - 9 a.m. – Open Meeting**
Department of Health Professions, 6606 W. Broad St., 5th Floor, Conference Room 1, Richmond, Virginia

A meeting to include: adoption of proposed regulations to replace Emergency Public Participation Guidelines, VR 530-01-3; discussion of the use of advisors in the development of regulations in response to petitions for rulemaking and of a workplan and tentative timetable. Public comment on the development of regulations VR 530-01-1 will be received from 9 a.m. to 9:30 a.m. General board business and hearings will be conducted.

Contact: Scotti W. Milley, Executive Director, Virginia Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

DEPARTMENT OF STATE POLICE

December 3, 1993 – Written comments may be submitted through this date.

Calendar of Events

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.

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

COMPREHENSIVE SERVICES PREVENTION AND EARLY INTERVENTION STEERING COMMITTEE

† **December 3, 1993 - 10 a.m.** – Open Meeting
Department of Social Services Regional Office, Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia. ☒

† **December 17, 1993 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority, Conference Room 2, 601 S. Belvidere St., Richmond, Virginia. ☒

The Steering Committee is working at the direction of the State Executive Council to develop recommendations for the organization and development of a comprehensive system of prevention and early intervention services directed at the needs of children and families throughout the state. The Steering Committee is comprised of about 40 members representing citizen, private and public interests.

Contact: Eloise J. Cobb, Ph.D., Project Coordinator, Department of Health, Suite 135, Main Street Station, Richmond, VA 23218, telephone (804) 371-8838.

BOARD OF PROFESSIONAL COUNSELORS

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 (BOARD OF)

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.

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† **February 10, 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 and Occupational Regulation intends to adopt regulations entitled: **VR 190-00-04. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the board to follow to inform and incorporate public participation when promulgating board regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-310 of the Code of Virginia.

Contact: Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation,

3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.

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.

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† **February 10, 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 Real Estate Appraiser Board intends to repeal regulations entitled: **VR 583-01-1. Public Participation Guidelines** and adopt regulations entitled: **VR 583-01-1:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Real Estate Appraiser Board to follow to inform and incorporate public participation when promulgating appraiser regulations.

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

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

Calendar of Events

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 ☎

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.

† **January 12, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia ☒

A general board meeting.

Contact: David 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 ☎

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.

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.

Calendar of Events

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

Calendar of Events

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

Calendar of Events

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

† **December 15, 1993 - 2 p.m. – Open Meeting**
Department of Transportation, 1401 E. Broad Street, Richmond, Virginia ☒ (Interpreter for the deaf provided upon request)

A work session of the Commonwealth Transportation Board and the Department of Transportation staff.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

† **December 16, 1993 - 10 a.m. – Open Meeting**
Department of Transportation, 1401 E. Broad Street, Richmond, Virginia ☒ (Interpreter for the deaf provided upon request)

A monthly meeting to vote on proposals presented regarding bids, permits, additions and deletions to the highway system, and any other matters requiring board approval. Public comment will be received at the outset of the meeting on items on the meeting

agenda for which the opportunity for public comment has not been afforded the public in another forum. Remarks will be limited to five minutes. Large groups are asked to select one individual to speak for the group. The board reserves the right to amend these conditions.

Contact: John G. Milliken, Secretary of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-8032.

TREASURY BOARD

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.

VIRGINIA VETERANS CARE CENTER

Board of Trustees

† **December 3, 1993 - 2 p.m. – Open Meeting**
VFW Post 3219, 122 E. Mellen St., Hampton, Virginia

A quarterly meeting to review the operations of the Virginia Veterans Care Center.

Contact: John T. Plichta, Executive Director, P. O. Box 6334, Roanoke, VA 24017, telephone (703) 857-6974, toll-free 1-800-220-8387 or (703) 342-8810/TDD ☎

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. - Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia ☒

A regular commission meeting including a discussion of regulations pertaining to appeals concerning licensing decisions.

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 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 WAR MEMORIAL FOUNDATION

† November 29, 1993 - noon - Open Meeting
The War Memorial, 621 S. Belvidere St., Richmond, Virginia ☒ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Peggy R. Robertson, Assistant Director for Administration, Division of Engineering and Buildings, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

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.

Calendar of Events

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.

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† **January 6, 1994 - 7 p.m.** – Public Hearing
Department of Environmental Quality, 4900 Cox Road,
Board Room, Innsbrook, Glen Allen, Virginia.

† **January 31, 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 Virginia Waste Management Board intends to amend regulations entitled: **VR 672-01-1:1. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-1402 of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its

powers and duties required by the Act and consistent with the federal statutes and regulations.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 of the Code of Virginia.

Contact: William F. Gilley, Waste Division, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 225-3966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

† **December 15, 1993 - 8:30 a.m.** – Open Meeting

Department of Professional and Occupational Regulation,
3600 W. Broad St., Conference Room 2, Richmond, Virginia

† **December 16, 1993 - 8:30 a.m.** – Open Meeting

Calendar of Events

Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 3, Richmond, Virginia. ☒

A general board meeting to conduct exam item review.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8595.

† **January 27, 1994 - 8:30 a.m.** – Open Meeting
† **January 28, 1994 - 8:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 3, Richmond, Virginia. ☒

A general board meeting to conduct regulatory review and final examination review.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

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

Calendar of Events

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

Calendar of Events

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.

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† January 6, 1994 - 7 p.m. - Public Hearing
Department of Environmental Quality, Innsbrook Office, 4900 Cox Road, Glen Allen, Virginia.

† January 31, 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 amend regulations entitled: **VR 680-41-01:1. Public Participation Guidelines.** The purpose of the proposed amendments is to replace

existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act.

The board has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230. 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 facilities should contact Ms. Doneva Dalton, Office of Regulatory Services, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 27, 1993.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230.

Contact: Cindy Berndt, DEQ, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† January 31, 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 Waterworks and Wastewater Works Operators intends to **repeal** regulations entitled: **VR 675-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 675-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to implement the requirements of the Administrative Process (APA) and the legislative changes to the APA made by the 1993 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 waterworks and wastewater works operators 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.

Calendar of Events



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

JOINT SUBCOMMITTEE STUDYING EDUCATIONAL MUSEUMS

† **December 15, 1993 - 10 a.m. – Open Meeting**
Art Museum Lecture Hall, Roanoke, Virginia.

The subcommittee will meet to hear public comments on educational museums. HJR 453.
Those persons wishing to speak should contact Dawn B. Smith, House of Delegates, P. O. Box 406, Richmond, VA 23203, telephone (804) 786-7681.

Contact: Kathy Harris, Staff Attorney, Division of Legislative Services, 910 Capitol St., 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.

JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION

† **December 13, 1993 - 9:30 a.m. – Open Meeting**
General Assembly Building, Senate Room A, Lobby, Richmond, Virginia.

Staff briefing on the Virginia Retirement System and the 900 East Main Street Project.

Contact: Phil Leone, Suite 1100, General Assembly Building, Capitol Square, Richmond, VA 23219, telephone (804) 786-1258.

JOINT SUBCOMMITTEE STUDYING PROCEDURAL ASPECTS OF THE TRIAL, APPEAL AND COLLATERAL PROCEEDINGS OF CAPITAL CASES

† **December 1, 1993 - 10 a.m. – Open Meeting**
State Capitol, House Room 4, Richmond, Virginia.

The subcommittee will meet to hear Capital Study Group Recommendations. HJR 402

Contact: Frank Ferguson, Division Manager, Division of Legislative Services, 910 Capitol Street, 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.

CHRONOLOGICAL LIST

OPEN MEETINGS

November 29

† Barbers, Board for
Optometry, Board of
† War Memorial Foundation, Virginia

November 30

Calendar of Events

† Air Pollution Control Board, State
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Landscape Architects, Board for
Industrial Development Services Advisory Board
Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Nursing, Board of
Radiation Advisory Board

December 1

† Alcohol Safety Action Program - Mount Rogers
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Land Surveyors, Board for
- Professional Engineers, Board for
Emergency Planning Committee, Local - City of Alexandria
† Emergency Planning Committee, Local - Winchester
† Maternal and Child Health Council
Medicine, Board of
- Advisory Committee on Acupuncturist
† Nursing, Board of
Nursing Home Administrators, Board of
† Procedural Aspects of the Trial, Appeal and Collateral Proceedings of Capital Cases, Joint Subcommittee Studying
Water Commission, State

December 2

† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
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
† Medicine, Board of
† Prevention and Early Intervention Steering Committee, Comprehensive Services
† Veterans Care Center, Virginia
- Board of Trustees

December 4

Dentistry, Board of

December 6

† Barbers, Board for
† Nursing, Board of
- Special Conference Committee
Veterinary Medicine, Board of

December 7

Aging, Department for the
- Long-Term Care Ombudsman Program Advisory Council
† Agriculture and Consumer Services, Board of Auctioneers Board
† Emergency Planning Committee, Local - Hanover County
† Historic Resources, Department of
- State Review Board
Hopewell Industrial Safety Council
† Nursing, Board of
- Special Conference Committee
Polygraph Examiners Advisory Board
Real Estate Appraiser Board
Veterinary Medicine, Board of

December 8

† Agriculture and Consumer Services, Department of
- Virginia Sweet Potato Board
† Conservation and Recreation Foundation
Contractors, Board for
† Historic Resources, Department of
- Board of Historic Resources
† Labor and Industry, Department of
- Migrant and Seasonal Farmworkers Board
† Pharmacy, Board of
† Virginia Racing Commission

December 9

† Child Day-Care Council
† Food Service Advisory Committee
† Nursing, Board of
Youth and Family Services, Board of

December 10

† Disability Services Council
Medicine, Board of
- Executive Committee
† Nursing, Board of
- Special Conference Committee
Real Estate Board
STD/HIV Advisory Committee

December 11

Medicine, Board of
- Credentials Committee

December 13

Hazardous Materials Emergency Response Advisory Council
† Health, State Board of
† Joint Legislative Audit and Review Commission

December 14

Chesapeake Bay Local Assistance Board
- Northern Area Review Committee
Higher Education for Virginia, State Council of
† Museum of Fine Arts, Virginia
- Collections and Executive Committees

December 15

Calendar of Events

Chesapeake Bay Local Assistance Board
- Central Area Review Committee
- Southern Area Review Committee
† Contractors, Board for
† Corrections, Board of
† Educational Museums, Joint Subcommittee Studying
Environmental Quality, Department of
Local Debt, State Council on
† Transportation Board, Commonwealth
Treasury Board
† Waste Management Facility Operators, Board for

December 16

† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
† Transportation Board, Commonwealth
Voluntary Formulary Board, Virginia
† Waste Management Facility Operators, Board for

December 17

† Fire Services Board, Virginia
Interdepartmental Regulation of Children's Residential
Facilities, Coordinating Committee for
† Outdoors Foundation, Virginia
† Prevention and Early Intervention Steering
Committee, Comprehensive Services

December 20

† Lottery Board, State

December 21

Health Services Cost Review Council, Virginia
† Marine Resources Commission, Virginia

December 22

Compensation Board

January 5, 1994

† Geology, Board for

January 6

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
† Professional Soil Scientists, Board for

January 13

† Forestry, Board of
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

January 25

† Health Services Cost Review Council, Virginia

January 27

† Education, Board of
† Waste Management Facility Operators, Board for

January 28

† Waste Management Facility Operators, Board for

February 2

† Mines, Minerals, and Energy, Department of

February 24

† Education, Board of

PUBLIC HEARINGS

November 29

Human Immunodeficiency Viruses, Joint Subcommittee
Studying

November 30

† Air Pollution Control Board, State
† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for

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
† Education, State Board of
Waste Management Board, Virginia

December 15

Air Pollution Control Board, State
Corrections, Department of
Waste Management Board, Virginia

December 16

Calendar of Events

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 6

† Air Pollution Control Board, State
† Chesapeake Bay Local Assistance Board
† Conservation and Recreation, Board of
† Conservation and Recreation, Department of
† Environmental Quality, Department of
† Historic Resources, Board of
† Historic Resources, Department of
† Marine Resources Commission
† Soil and Water Conservation Board, Virginia
† Waste Management Board, Virginia
† 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 19

† Education, State Board of

January 20

† Education, State Board of

January 24

Lottery Board, State

Calendar of Events
